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INTERNATIONAL ARBITRATION AND PROCEDURE

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By

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New Haven: Yale University Press
London: Henry Frowde
Oxford University Press
MCMXI

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First printed December, 1911. 1000 copies.

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THE YALE LAW SCHOOL

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FOREWORD

THE WHITE HOUSE
WASHINGTON

November 4, 1911

I have read with great interest the work of Mr. Morris on International Arbitration and Procedure, now published by the Yale University Press, and am sure it will be a real contribution to the literature on the subject. Mr. Morris has delivered lectures in the Yale Law School for eight years on this topic, and is familiar, by reason of his experience as Counsel in the Venezuelan Arbitration, with the many precedents for peaceful adjudication of international controversies that can be found in the history of the world.

With these in mind it may be said that the general idea of arbitration is by no means a

new one, although it undoubtedly possesses new interest at this time. In his work Mr. Morris has shown the progress that has been made toward the final hope of all the advocates of arbitration, to wit, an arbitral court, sustained by the agreement of all nations, into which any nation may summon another nation against whom it claims a grievance, have a hearing, and secure a judgment, which will either enforce itself through the public opinion of the nations, or may be actually enforced by an international executive.

I am indebted to Mr. Morris for much information contained in the present volume.

(Signed) Wm. H. Taft.

INTERNATIONAL ARBITRATION AND PROCEDURE

Chapter I

Probably the majority of people have always regarded arbitration as a distinctively modern method of settling international differences. As a matter of fact it is almost as old as war itself. The two ideas, indeed, march side by side through all history. The more we study the past, the more we must conclude that the love of justice as well as the love of mastery are ultimate facts in the psychology of the race.

For the beginnings of arbitration we must go to the father of history. From Herodotus, however, we get only the merest intimations. He describes in detail no famous arbitrations, but we can gather, from a few references here and there, that men did not invariably settle their quarrels with cold steel. He tells us, for example, that the succession of Darius was disputed between his favorite sons, Xerxes and Artabazanes, and that it was

referred to their uncle for settlement. Again, Artaphernes, after his re-conquest of Ionia, called together the deputies of the several cities and compelled them to sign a permanent convention, that, in case of disputes, they would settle them without resort to arms. It is significant, however, that this agreement was forced upon the Greeks by a barbarian conqueror. The convention obliged the Greek cities to settle disputes among each other—not, of course, differences which might arise with their conquerors. In these instances, arbitration was merely a police measure for the preservation of order. This is the case with practically all ancient attempts at arbitration. The Greeks themselves frequently settled their own internal quarrels this way, but not their disputes with the outside world. So far as I know, this was the case with all the old republics and monarchies. I have already said that the succession of Darius was peaceably decided by reference to a dis-

interested party. Had either of the claimants been a foreigner, there would inevitably have been war.

In Ancient Greece, especially, conditions were most favorable to arbitration. This country was not one political organization, but was either an antagonism, or, at times, a union more or less crude, of divers states and cities. Between the ancient cities of Greece there were, however, a thousand bonds—religion, language, art, love of athletic games and a common origin; the only one that was lacking was political identity. Greece never attained complete nationality; each section, each city, jealously maintained its own authority, and would suffer no encroachment from the rest. With these various political organizations, there were opportunities enough for disputes. Similar conditions, as we shall see later, prevailed during the Middle Ages and at the present time exist in South America and have always been productive of arbitra-

tion. Questions over which Grecian states could quarrel were without end. Their frontiers touched, and there were consequently bickerings over boundary lines. The ownership of islands of the Ægean Sea, claimed at different times by different cities, was a fruitful cause of trouble. Matters of commerce and of religion also frequently brought the people to the verge of war. War, indeed, was not infrequent, but the Greek spirit was especially inclined to arbitration. Thucydides quotes a certain King of Sparta, who declared that it would be impious to attack an enemy who was willing to present his grievance before a just judge. The reverence in which the Greeks held arbitration is evident from the persons selected as arbitrators. When they did not lay the whole matter before the oracle at Delphi, as was often previously done, the honored men in the State—the poets, historians, generals, statesmen and athletic victors—were pressed into service as

arbitrators. Simonides decided an important case between Syracuse and Agrigentum; Themistocles judged between the Corinthians and the Corcyræans. In this as in so many other things the Greeks were modern. They even anticipated the treaty of permanent arbitration. Thus in the alliances which were frequently made between cities, there were clauses providing that all disputes that might thereafter arise should be settled by impartial judges. Argos and Lacedæmonia lived for years under such a convention. The procedure before the tribunals was also like that followed to-day. The arguments were drawn up in the most solemn manner, sworn to by all parties to the dispute, and filed away in the temples. They described, in detail, the subject of the arbitration and named the arbitrator. Each side, as now, sent agents to represent it before the court, and the whole proceeding was conducted with the most scrupulous regard to order and justice.

The same conditions prevailed, to a considerable extent, in the early days of Roman history, when Italy was made up of numerous independent states. When, however, Rome assumed sovereignty over all Italy, and when she extended the limits of her conquest over the entire world, we find the submission of questions to arbitration becoming less frequent and finally ceasing with her complete dominion. The long centuries of Roman imperial rule are all but barren of arbitrations. Rome regarded the whole world as her vassal; the one duty of such peoples as had not been born within the empire was submission. There was only one sovereignty—that of Rome. This conception is necessarily antagonistic to the idea of arbitration, which can take place only between equals. Titus Livius says that the mere remembrance of an attempted mediation by the Rhodians was a public scandal.

Arbitration, therefore, in ancient times,

seems to have been the inevitable consequence of a lack of a complete and unified political organization between peoples otherwise bound together by common ties of religion, literature and general civilization. The subjects of arbitration were, moreover, that class of questions only which did not affect the political integrity of either party, but were disputes relative to their dealings with each other as equal members of a society that had not as yet attained any concrete political form.

When the political unity of the civilized world was destroyed by the disruption of the Roman Empire, the numerous states and principalities that arose on its ruins were forced for similar reasons again to have recourse to arbitration for the settlement of their quarrels. The political organization of Europe in the Middle Ages bore certain marked resemblances to that of the ancient world before the formation of the Roman Empire. The Middle Ages were, therefore, fruitful in

arbitration. The land was parcelled out among a hundred rulers, who had constant grounds for quarrel, but who also had common grounds for sympathy and coöperation. Their states were assailed by barbaric foes, as were those of Greece, and above all, Christianity became the common religion. It is unnecessary to emphasize the spirit of Christianity itself as an influence making for peace. There was, however, constant conflict. Geographical boundaries were faintly drawn and imperfectly understood; frequent intermarriage induced warfare over questions of succession. War was the everyday occupation of gentlemen; lord fought lord; baron, baron; and king, king. This strife in its turn bred arbitration. Had it not been so the lords and barons would have destroyed one another. The machinery of arbitration was also constantly at hand. The disputants could usually be brought to submit causes to their lords, who had, moreover, the strength to enforce their decrees. Other

agencies were also used. Certain cities and parliaments adjudged disputes; the Parliament of France won a great reputation as a peacemaker; and the learned doctors from the great universities—especially Padua and Bologna—were constantly impressed. Above all, certain monarchs, notably the Kings of France and England, were appealed to. The rulers of these two nations were especially favored, because they did not claim universal dominion; they could themselves, therefore, be relied upon as impartial and unaggressive. Certain monarchs, distinguished for the purity of their lives and character, acquired a great vogue as arbitrators, notably St. Louis of France, who was resorted to as frequently as the Pope himself. The prolonged disputes between Henry III of England and his barons were referred to Louis in 1264, and were by him decided in favor of the King. There were no invariable rules governing these proceedings. Treaties commonly fixed the date and

place of meeting, and put a time limit for the decision. Penalties were occasionally fixed for failure to accept the results. These were frequently needed, for the awards were not always accepted. Reference has just been made to Louis IX's arbitration between Henry III and his barons. The tribunal met in great state at Paris; Henry and his enemies personally appeared before it; but the decision, favorable to the King, was no sooner given than the disappointed barons flew to arms again.

Many disputes during the Middle Ages were submitted for arbitration to the Popes and the Emperors of the Holy Roman Empire. The German Emperors claimed universal dominion, looked upon European states as their vassals and called upon them to submit their quarrels to their common master. They attempted to establish a general political organization that would have included all other countries, as had been the case with the

ancient Roman Empire. Possibly for this very reason, they made but little headway in their efforts to have all questions arising between the European states submitted to them for arbitration. To have selected them would practically have amounted to accepting their theory that, as the representatives of the Roman Cæsars, all Europe was their vassal. As already pointed out, rulers not pretending to universal dominion were generally chosen as arbiters.

Disputes were also frequently submitted to the Popes of Rome for arbitration. Their claim of a right to homage over all earthly kings, on the ground that they represented God on earth, was, at times, generally accepted. The Kings of England and France received their kingdoms at the hands of the Pope; even the German Emperors went to Rome to be crowned. The Papacy claimed the right to dispose of these domains at will, and the right to mediate in their quarrels was

a natural corollary. For several centuries this was conceded. Several treaties drawn up in the Middle Ages stipulated that in case of disagreements, the matter should be referred to Rome. An alliance adopted in 1235 between Genoa and Venice stipulated that the Pope should decide all differences, and should excommunicate either state if it refused to abide by his decision. The Popes were also voluntarily appealed to in special occasions. Alexander III, Honorius III, Johannes XXII and Gregory XI frequently acted as arbitrators. Perhaps the most famous instance was the decision of Alexander VI between Spain and Portugal in their quarrel over the newly discovered lands in the new world. This event is significant of the Papal power as the grand mediator and dispenser in earthly affairs. In theory the Pope, as God's vicegerent, owned the new lands discovered by Columbus, as well as the land of Europe itself. Ferdinand and Isabella recognized this

claim, for, soon after the return of Columbus, they appealed to the Pope for a grant of all the lands he had discovered. Their eagerness was partly explained by the successful voyages of the Portuguese—who also desired to reap the fruits of their enterprise. The Pope finally decided that Spain should hold everything west of a line somewhere between the forty-first and forty-fourth degrees of longitude, and Portugal everything east.

The most powerful Bishops, as well as the Popes, were called upon to mediate. In 1276 two Bishops adjudicated between the Kings of Hungary and Bohemia. With the Reformation and the consequent decline of the Papal power its influence as an arbitrator waned. The Pope still occasionally arbitrates, but he no longer presumes upon his right to dictate between warring states.

The general conditions, therefore, both as to the causes which made arbitrations frequent, and as to the character of disputes

which were submitted to arbitration, were the same during the Middle Ages as in ancient times.

As though it were some unwritten law of nature, arbitration as a means of settling international disputes, appears to be inseparably connected with the existence of a number of sovereign political units, unconnected by any joint political organization, but joined together by common ties in every other respect.

To the political chaos of the Middle Ages, succeeded the stable monarchies of the modern world. A process of national unification gradually joined the numerous states and principalities of Europe into a few powerful nations. The questions which arose during this formative period were matters of national importance generally affecting national existence and not, therefore, that class of questions which have customarily been submitted to arbitration. Thus in the earlier periods of

modern times arbitration almost entirely ceased. As, however, the nations of modern Europe gradually assumed their present form and stability, questions began to arise among them that were more of the character of business relations between equal members of a social community. With the rise of this class of relations arbitration began again to grow in favor. The extension of modern commerce, the closer international relations produced by modern means of transportation and communication, with the resultant commercial and political rivalries, has been to a great degree the occasion for this. It has likewise produced the majority of disputes which have been submitted to arbitration. This has been the case since the seventeenth century. At first that scrupulous regard for the rights of other nations that obtains now did not exist. The early arbitrations were too often influenced by the right of might. In the first stages of the outward commercial develop-

ment of nations, following the great discovery periods of the fifteenth century, there was friction due to the lack of comity among nations. The principles of international law were imperfectly understood and disputes frequently arose of a character naturally to be settled by arbitration. Thus, in a treaty between France and England in 1606, two arbitral courts were established, each consisting of two Englishmen and two Frenchmen, one court holding at London, the other at Paris. Aggrieved French shipowners presented their protests at London, and aggrieved Englishmen at Paris. In case the courts were evenly divided, provision was made for calling in an umpire. "Conservators of Commerce" was the name applied to the members of these tribunals.

England's chief difficulties, however, were with her great commercial rival, Holland. In 1652 an arbitration board, consisting of four Englishmen and four Dutchmen, met at Gold-

smith's Hall, London, to settle commercial disputes that had accumulated for many years. The merchants of the two nations had met in several quarters of the globe, and wherever they had met they had clashed. At the time of meeting, the Dutch were accused of having detained many English ships in Denmark, and with inflicting outrages upon British seamen in the East Indies. The English presented fifteen counts of ill treatment, ranging all the way from massacre to sharp dealing, and claimed pecuniary damages amounting to more than two and a half million sterling. The Dutch, on their part, presented ten claims against the English, setting up damages to just about the same amount. The commissioners, after patiently hearing the case, and examining all the documents, decided that there was little to choose between the two contestants, and dismissed the damages asked by both.

Disagreements of this character, which are

unquestionably proper subjects for arbitration, have increased with the spread of modern civilization throughout the world. Especially is this true of the last century. The whole world has now been brought under this influence. Africa has been parcelled out among the civilized European powers; Asia has been invaded by European colonies and European influence, and both Europe and America have been brought by their commercial relations into immediate touch with the whole world. The opportunities for misunderstandings have been without end; the disputes which have arisen, however, have been largely questions of that character which are, as has been said, the natural field of arbitration, and most of these differences have, in fact, been settled in that way. The nineteenth century was not like the eighteenth, a period of perpetual wars and conflicts, because the disputes which arose were, at least since the general recognition of the principles of

nationality, largely of the character of business differences, not affecting the political integrity or existence of either party, but only their relation to each other as equal members of a society of nations.

An increase in the number of matters which are submitted to arbitration, and the necessity of having recourse to it as a means of settling international disputes, have been both caused by the fact that the civilized world now again presents, although upon a much larger scale, the identical situation which arose in ancient and again in mediæval times. There are now, as there were then, a number of independent and equal political units, bound together by every common tie of civilization, but having no concrete form of joint political existence.

I will now describe, with somewhat more detail, a few of the arbitrations which have taken place in recent times, to which the United States has not been a party.

It is worthy of note that most of the arbi-

trations of the eighteenth and early part of the nineteenth centuries were the aftermath of war, frequently growing out of expressed stipulations in the treaties of peace—as for example the Jay Treaty of 1794, the Austro-Prussian-Russian Treaty of 1797, etc.; while in striking contrast, later arbitrations have been for the adjustment of questions arising from competition and rivalry in commerce and trade.

Naturally the countries with the most extensive ramifications in other lands have figured chiefly before arbitration tribunals. England, for example, has had occasion almost constantly to arbitrate. One of her most notable arbitrations was that with France in 1842, growing out of the blockade established by the latter country over the coast of Portendic in 1834-35. This blockade was declared during the war with the Trarza Moors. From it England was the chief sufferer. Her merchants brought large cargoes

of miscellaneous merchandise to the Moors, taking back in exchange shiploads of gum. It so happened that France did not promptly notify other powers of this blockade. Consequently many English houses sustained large losses. These were the occasions for many diplomatic exchanges, both countries finally agreeing to submit the matter to the King of Prussia, Frederick William IV. France stipulated that, under no circumstances, were its principles in the matter of blockade and maritime law, nor its claim to complete sovereignty over the coast of Portendic, to be involved. Likewise, England safeguarded its principles by a similar declaration. King William promptly decided the points at issue. He found that France had been culpable in not informing England that a blockade had been declared; and directed that she pay the losses sustained by England during the period from the time the blockade had been established to the time other powers had been notified. The

King decided, however, that after the notification was once given, no damages could be claimed; and all the English claims for losses suffered subsequently were dismissed.

Other important arbitrations of England with European powers have been those with Portugal, over the claim to Delagoa Bay and the boundary lines of the possessions of the two countries in East and Central Africa; with Germany, in relation to certain claims to African territory, and with the Netherlands for damages arising out of the treatment of a certain Mr. Carpenter, master of the whaling ship *Costa Rica*. The Delagoa Bay award, which was made in 1875 by Marshal MacMahon, President of France, peacefully settled a dispute of more than fifty years. Portugal claimed all her South African territories by virtue of discoveries made in the sixteenth century. In the seventeenth and eighteenth centuries she had strengthened them by establishing certain colonies on the

islands of Inyack and Elephant in the modern Delagoa Bay. These, however, had been neglected. In 1823 Captain Owen was commissioned by Great Britain to make a hydrographic survey of Delagoa Bay. He found the Portuguese authority weakened and concluded treaties with the Chiefs of Tembe and Mapoota, whereby their allegiance was transferred to the King of Great Britain. The French President, however, promptly dismissed the English claims. He showed that England had frequently acknowledged Portuguese authority, even recommending Captain Owen himself to the consideration of Portugal's representatives in East Africa; that the native chiefs, since they were already dependents of Portugal, had no legal right to conclude any treaties; and that, even though they had, certain irregularities made them void. The award, therefore, was entirely against England. In 1891, other disputes between England and Portugal relating to their respective

possessions in East and Central Africa, were decided by M. Paul Honore Vigliani, Chief President of the Court of Cassation in Florence, and the present boundary lines were drawn.

In her arbitration with the Netherlands over the *Costa Rica,* England won a substantial victory. This was decided by M. de Martens, the great jurisconsult of St. Petersburg, appointed by the Czar. Captain Carpenter, master of the whaling ship *Costa Rica,* in January, 1888, overtook an abandoned praw, a native Malay boat, several miles out from Amboyna. On board were found several cases of spirits, which the English appropriated, sending adrift the wreck. As Captain Carpenter's crew soon became demoralized by a too free indulgence in the salvaged cargo, he ordered it all thrown overboard. Three years afterwards at Ternate, Netherlands Indies, he was arrested on the charge of theft and imprisoned twelve days

at Macassar. For this Great Britain claimed twenty-five thousand pounds indemnity. England claimed, that, inasmuch as the offense, if offense there were, had been committed one hundred and twenty-five miles out to sea and not within the prescribed three-mile limit, the Dutch authorities had no jurisdiction. It was shown that the authorities at Macassar had promptly released Captain Carpenter when they learned this fact. M. de Martens awarded Great Britain an indemnity of eleven thousand and eighty-two pounds, which the Netherlands government paid.

Great Britain's difficulties with the South American Republics have been continual. This was inevitable, because of the chronically unstable conditions in South America, and because of the fact that England, having closer commercial relations with them than any other power, ran greater risks of clashing.

The Venezuelan boundary dispute, involving the line between British Guiana and

Venezuela, which was the most famous of all, was covered by a treaty between Great Britain and Venezuela, for the settlement of this question, signed at Washington February 2, 1897.

It will be recalled as an interesting fact connected with this arbitration that it was brought about by the intercession of the United States. In the historic instruction to the American representative at London, the traditional policy of the American government, known as the Monroe Doctrine, was set forth, and an arbitration of the question in entirety between Venezuela and Great Britain was urged. The British government's reply tacitly admitted the soundness of the Monroe Doctrine, although denying that it was sanctioned by international law, but declared that arbitration concerning any territories already settled by British subjects could not be entertained. An investigating commission was named by the President to report upon the

true divisional line between the Republic of Venezuela and British Guiana, with Justice Brewer as its head, and the two countries concerned were invited to submit documentary or other evidence. A basis of a treaty between Venezuela and Great Britain was finally agreed upon by the British Ambassador and the Secretary of State.

The treaty provided that the arbitral tribunal should be composed of five members, four of whom were named in the instrument itself as follows: Baron Herschell and Sir Richard Henn Collins, a justice of the British Supreme Court of Judicature, both nominated by members of the Judicial Committee of Her Britannic Majesty's Privy Council; Chief Justice Fuller of the United States Supreme Court, nominated by President Andrade of Venezuela; Mr. Justice Brewer, also of the United States Supreme Court, nominated by the other justices of this court, and M. F. de Martens, Privy Councillor, of St. Petersburg,

selected by the four members thus designated. M. de Martens acted as the President of the tribunal. In addition to the imposing personnel of the tribunal each of the parties was represented by eminent counsel.

The tribunal was to "investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by, the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana," and to "determine the boundary line between the Colony of British Guiana and the United States of Venezuela."

On January 25, 1899, the tribunal met in Paris. The second session was not held, however, until June 15, at which time the organization of the court was permanently effected. The sessions then continued uninterruptedly and harmoniously, each side presenting elaborate arguments, until September 27. On the 3d of October the award was announced

finally delimiting the boundary between the territory of Her Britannic Majesty and the United States of Venezuela.

The war in 1879, between Chile, on the one hand, and Peru and Bolivia, on the other, was a fruitful source of trouble. It was asserted that Chile had bombarded certain defenseless towns in violation of all principles of international law—in particular, without the customary notification to non-combatants. In these bombardments, Englishmen, Frenchmen, Italians and other Europeans suffered. Several commissions were established to settle these claims. England put in a claim for damages aggregating six million dollars, and recovered two hundred and seventy-five thousand dollars.

More important in its bearing upon certain disputed points concerning blockades was the arbitration with the Argentine Republic in 1864, decided by the President of Chile. In 1845 the Argentine Republic was at war with

the Republic of Uruguay. The Argentine government declared a blockade over the coast of Uruguay. British merchants at Buenos Ayres objected. They asked for more time; at least enough to enable certain vessels which were known to be on the way and which could not possibly be notified, to finish their voyages. The Argentine government denied this request. Undoubtedly there was much local feeling against the British merchants, as they were suspected of trading with the enemy—a trade at which the blockade specifically aimed, and this may have influenced the Argentine authorities in their denial of the request. Soon after six vessels which had touched at Montevideo, arrived at Buenos Ayres. They were promptly confiscated on the ground that they had broken the blockade. The British at once demanded reparation. The Argentine government denied all responsibility. The matter dragged on, and in 1858 an agreement was concluded

between the two countries for a settlement of losses sustained by the English during the war. This was a general agreement, not intended, according to the Argentine contention, to cover the damages alleged for the confiscated ships. The English, however, attempted to include these among other claims. The President of Chile was asked to decide two points: first, are the confiscated ships included in the general agreement? and second, if not, is the Argentine Republic legally bound to pay damages for such losses? The arbiter decided that the claims for the six ships were not understood in the general agreement drawn up in 1858. On the second point he decided that Great Britain could not legally demand damages. The President of Chile said that a blockading state had the right to dictate all measures to cause the blockade to be respected; that the Argentine Republic could not be expected to give reception at its ports to vessels which had violated it; that a term

is not customarily given neutral vessels during which they may enter blockaded ports; and that a nation closing its ports is the sole judge of the conditions.

Another case in which England lost, was that which involved damage claims made in behalf of one Captain Thomas Melville White. This person was arrested in March, 1861, at Callao, charged with the attempted assassination of Don Ramon Castilla, President of the Republic of Peru. The attempted assassination was only one incident of a pending civil war, and was attributed to the revolutionists. Captain White was detained in prison from March 23, 1861, until January 9, 1862, when he was discharged from lack of evidence. Great Britain demanded an indemnity of forty-five hundred pounds on the ground that Captain White had been arrested on a baseless charge; that he had been brutally treated in prison; that his trial had been unreasonably delayed, and that he had been unjustly compelled to

leave the country. The matter was referred to a commission, appointed by the Senate of Hamburg. All points were decided in favor of Peru. It was brought out that White had consorted with the revolutionists and had been a leader among them; that he had been caught in several conspiracies; that his associates and certain acts gave good ground for suspecting that he might have been guilty of the crime. His detention was, therefore, said the commission, a justifiable precaution. The Peruvian authorities, as soon as they discovered their mistake, released White and expelled him from the country. The stories of brutal treatment the commission dismissed, because they rested entirely on the testimony of White himself, who, said the report, was a notoriously bad character and a proved liar. The delay in the trial, continued the report, was caused by Peruvian methods of procedure, different from those of England, but orderly and not a proper subject of criticism. As to

the expulsion of White, the commission decided that that was proper, as he had constantly conspired against the government and was an altogether worthless character.

Similarly, King Leopold of Belgium decided against Great Britain in the case of three naval officers, said to have been maltreated and imprisoned at Rio de Janeiro, Brazil. This at one time threatened serious complications, as England had seized and detained several Brazilian ships as indemnity. Brazil, however, declared that the officers were drunk, had treated passers-by with indignity, and had resisted arrest. There had been no indignity to Her Majesty's naval officers, because, said Brazil, they were clad in citizen's clothes. King Leopold decided that Brazil was entirely in the right.

Because we have dwelt in some detail upon the arbitrations of England with other powers, it is not intended to minimize the importance of the many arbitrations between Euro-

pean powers, or of the numerous references to arbitration in late years of South American boundary disputes. It is, however, a fact that the two great English-speaking peoples have had recourse to this form of pacific settlement more frequently than any other nations.

Aside from arbitrations, in the strict sense of the word, there have been countless pacific settlements of disputes involving the principle of arbitration by boards or commissions. There were numerous arbitral commissions after the defeat of Napoleon, to settle the many vexed questions growing out of the European wars. Some of these were for the regulation of navigation on international streams, but the majority of the commissions, at this time and in later periods, were for the settlement of amounts of compensation, the parties having already agreed by treaty that some amount might be due. There have also been numerous delimitation or boundary commissions.

One of the most interesting commissions in modern times is the Dogger Bank Inquiry which averted critically strained relations between Great Britain and Russia. The Dogger Bank is a famous and busy herring-fishing center. Here on the night of October 21, 1904, a Russian squadron, when on its way to the Far East, fired upon the Hull fishing fleet, sank one and damaged other trawlers, wounding and killing several men. Firm representations were made by the British government. Finally a convention was signed appointing an International Commission of Inquiry, which found that no hostile act had been committed by the Hull fleet; that there had been no torpedo boat among the trawlers nor in the neighborhood; and that the Russian admiral was culpable. The Russian government paid an indemnity to the families of those killed and injured, and damages to the owners of the boats.

Chapter II

In reviewing at the close of the preceding chapter some of the more important arbitrations of modern times, I excluded for the moment from consideration those to which the United States has been a party. I intend to make such arbitrations the subject of a separate chapter, because the questions which the United States Government has submitted to arbitration, especially with England, have been, in many instances, matters of grave importance. We may well say the United States has done more than any other country to establish arbitration as a method of settling important international disputes. In proof of this, it is only necessary to refer to the Geneva Tribunal. This tribunal not only settled, as between the United States and England, disputes of many years' standing, which would in the past have involved the disputants in a long and destructive war, but its decisions and

the principles which it invoked, form largely the basis of modern international law.

In considering, therefore, in this chapter, some of the most important arbitrations to which the United States has been a party, especial attention is called to the greater relative importance of the questions which the United States Government has submitted to arbitration. Again we should observe that the principles which have been discussed in the first chapter, as to the nature of arbitration in general, are again supported by the facts which we are about to review.

Perhaps the most striking monument to arbitration to-day is the thin border line which divides the United States from England's North American Dominions. From Passamaquoddy Bay to the Fuca Straits at Vancouver, it stretches more than three thousand miles. The territory traversed is one of the richest in the world. It furnishes all the products of the earth and sea—gold, silver, grain,

woods, furs and fisheries. Almost every inch has, at one time or another, been in dispute. Thousands of square miles, north and south of it, have been settled and occupied by the people of both nations, and national passions have been aroused, which, at times, seemed to make war inevitable. For more than one hundred and twenty years, Great Britain and the United States have had constant causes for quarrel over this northern boundary; but, in the end, the whole line has been established by peaceful means. The first dispute, over the extreme easterly boundary line between Maine and Canada, was settled by arbitration in 1799; the last, over the dividing line between Alaska and British Columbia, was decided only a few years ago. During these one hundred and twenty odd years there have been eight different causes of dispute,—over the St. Croix River, the islands in the Passamaquoddy Bay, the northeastern boundary, the boundary through the St. Lawrence and

Lakes Erie, Ontario and Huron, the boundary from Lake Huron to the Lake of the Woods, the northwest boundary, the dividing line between Vancouver and the mainland, and the Alaska dispute. In addition, other important arbitrations have taken place over the rights of neutrals and general commercial relations, over the fur seal and the Newfoundland fisheries, and over claims which have been held by citizens of one country against those of the other.

The Treaty of Paris in 1783, in which England recognized American independence, was the original cause of all boundary troubles. England recognized American sovereignty as far west as the Mississippi and south of the Great Lakes. An attempt was made to define the line precisely. The commissioners evidently flattered themselves that they had succeeded, for it is declared in the treaty, that the boundaries were thus laid down so that "all disputes which might arise in the future

. . . . may be prevented." However, if they had deliberately sought a standing cause of discord, they could have hit upon none more effectual. There was hardly a single clause in this section that was not open to misconception. The commissioners made no record of their intention, and affixed no map to the treaty showing the divisions. It would probably have served no purpose if they had. Mitchell's map of 1755, which they occasionally consulted, was woefully inaccurate. For a great distance no surveys had been made, and such as had been made were untrustworthy. The geography of our northern boundary line was as vague and unknown as the hyperborean regions to the ancient Greeks. Unquestionably, too, the American commission did not desire to push the boundary question too closely. They were bent upon one great effort, to secure the absolute independence of the colonies, and to assure sovereignty as far as the Mississippi, and so they were

not prepared to split hairs over boundary lines.

Hardly had peace been established, however, before the question came up. The first point was that of the St. Croix River. The treaty said that the river divided Maine and New Brunswick. On examination it was found that there was no such river. Maine antiquarians recalled that under the French, one of the rivers emptying into the Bay of Fundy was known as the St. Croix, which probably accounted for the fact that a stream, so designated, figured in Mitchell's map; but to the existing generation it was unknown. There were two important streams, one of which must have been the boundary intended; the first, still known as the Magaguadavic, to the west, and the second, the Schoodic, to the east. Their mouths are only seven miles apart, but in their northward course they so diverge that there are fifty miles between their sources,—a square area of from seven to eight

thousand miles. England at once claimed that the eastern river, the Schoodic, was the boundary. A short distance from its mouth this river divides; one branch, the Chiputneticook, flows almost due north, while the other extends west to a chain of lakes. England claimed that this latter branch, to the final lake, was part of its boundary. The United States, on the other hand, declared that the Magaguadavic was the stream intended. The matter was brought to a sharp issue when Nova Scotia began issuing land grants in the disputed territory. The American Peace Commissioners, Adams, Franklin and Jay, being appealed to, promptly replied that the Magaguadavic was the river improperly called the St. Croix. In 1790 Washington submitted the question to the Senate, with the recommendation that it be quickly and peacefully settled. In the Jay Treaty, concluded with England in 1794, it was agreed to submit the question to arbitration. In 1796, the com-

mission, made up of one American citizen, David Howell, one British subject, Thomas Barclay of Nova Scotia, and Mr. Egbert Benson of New York City, as umpire, met at Halifax. The proceedings were intensely interesting. As a preliminary, complete and accurate surveys were made of Passamaquoddy Bay. All the disputed territory was visited by the commissioners. It was soon found that the actual intention of the Peace Commissioners in 1783 would have to be disregarded, simply because nothing decisive on that score could be learned; the question resolved itself into ascertaining just what stream was known to the early French settlers as the St. Croix. Certain Indians, whose depositions were taken, declared that, according to tradition, the early French landing had been in the Magaguadavic, which had been named the St. Croix. The writings of the French voyageurs, however, clearly pointed to the Schoodic; indeed, all of the commissioners, Ameri-

can included, were convinced, when, on an island in the Schoodic—answering clearly to Champlain's description of the Isle de la Croix—they found remains of an old French fortification. So far the American claim was disproved. The British pretension, however, that the western branch was also part of the dividing line, was not allowed and the northern branch, the Chiputneticook, was decided on. Thus the first boundary arbitration was a happy compromise.

This, however, settled only a comparatively small section. The whole line, from the islands in the Bay of Fundy to the Lake of the Woods, was indefinite. Conditions were not favorable to a settlement. For twelve years after the St. Croix proceeding, the United States and England were on the constant verge of war over other matters. When it finally broke out, in 1812, we attempted to settle all boundary disputes at once, by seizing Canada. That effort, however, failed, and,

when, in 1815, peace commissioners met at Ghent, the disputed boundaries once more came up. Here, again, there was more anxiety to end the war than to draw nice territorial distinctions. All conquered territory was therefore restored on both sides; and three commissions were provided for,—one to settle the title to the islands in the Passamaquoddy Bay; another to draw the northeastern boundary as far as the St. Lawrence, and the third to mark it through the St. Lawrence and the Lakes to the Lake of the Woods. In case of disagreement, each question was to be referred to some friendly power.

The first commission met in the fall of 1817. The decision was promptly reached and was given out in November of the same year. The Treaty of 1783 had declared that the eastern boundary of the United States should include "all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east

from the point where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; except such islands as are now, or heretofore have been, within the limits of the said Province of Nova Scotia." The river Schoodic had already been accepted as the eastern boundary. A line drawn due east from the middle of its mouth left most of the islands in Passamaquoddy Bay within twenty leagues of the United States. The only point to be determined, therefore, was whether they had ever been a part of Nova Scotia. The commissioners decided that Moose Island, Dudley Island and Frederick Island belonged to the United States, and assigned the rest, including Grand Manan, to His Britannic Majesty.

The delimitation of the boundary through the St. Lawrence, Lake Ontario, Lake Erie and Lake Huron, also gave no difficulty. No appeal to a third party was found necessary.

The two commissioners met in November, 1821, and by June, 1822, had settled the boundary. The line begins at the point where the River Cataraquay and the forty-fifth parallel of latitude intersect and continues to the foot of the Neebish Rapids in Lake Huron. The Thousand Islands were duly apportioned between the two countries, and certain channels, lying wholly within American and British waters, were made free to the navigation of both. The commissioners also agreed to insert a clause that, in mapping their line, they had acted upon the presumption that all the rivers and lakes through which it ran, were open to the free use of both nations. The President of the United States acceded to this, but the British Minister refused. His theory was that this was a matter of right, and that to make a formal agreement on the point, might sometime cause it to be questioned

The other commissions provided for by the Treaty of Ghent, however,—to trace the line

from Lake Huron to the Lake of the Woods, and the boundary between Maine, New Hampshire, Vermont and New York and Canada—had troublous times. The commission on the St. Lawrence and Lake line, after finishing its labors, was reappointed as the second commission, to continue the boundary through Lake Superior overland to the Lake of the Woods. It finished its work in 1827, several years being required in which to make accurate surveys of the disputed territory. There were several large islands at the western end of Lake Superior which both nations coveted. The commission's report was apparently unsatisfactory to both, for it was not acted upon for ten years. The great dispute over the northeastern boundary overshadowed all other questions. The lake and land boundary questions ultimately became merged with this, and the two were settled together at the famous conferences between Mr. Webster and Lord Ashburton, at Washington in 1842.

The Treaty of Ghent, which provided for the arbitration of the Maine boundary, was signed in 1814. For nearly thirty years the matter was the subject of repeated negotiations. The peaceful bi-partisan commission failed; arbitration by the King of the Netherlands failed; constant diplomatic negotiations failed. Many times England and America seemed on the verge of war. Finally, in 1841, Daniel Webster became Secretary of State. The Englishman most popular in America was Alexander Baring, of the famous banking firm, who became Lord Ashburton. He knew America well, admired the country, and in his youth had married an American wife. One of his greatest ambitions was to bring the two English-speaking nations closer together. His appointment by Sir Robert Peel as special minister, with full power to settle the north-eastern boundary, and all other outstanding differences, was an emphatic earnest of England's sincere desire to arrive at an accommo-

dation. Here, too, it was welcome, for we had another territorial dispute on our south—the Texas question—which was rapidly leading us to war; and we were well satisfied to determine the other peacefully. Both Mr. Webster and Lord Ashburton kept the negotiations in their own hands. These were most informal; there were no protocols; and the arguments were not reduced to writing. The two gentlemen simply met and talked the thing out. As a result the northeast boundary was fixed as it is to-day, and the present line runs from the Neebish Rapids in Lake Huron through Lake Superior to the Lake of the Woods. The bitterness with which the "Ashburton Capitulation"—as Lord Palmerston called it—was assailed in Parliament, showed that England had made genuine concessions. The fact that Lord Ashburton had married an American wife was frequently thrown in his face.

It is not necessary to trace in detail the long

negotiations that led ultimately to this happy result. The trouble was caused, as usual, by the inaccurate geography of the Paris Treaty in 1783. As we have seen, the St. Croix River, to its source, had been adopted as the southeastern boundary of the State of Maine. The Treaty of 1783 stipulated that from this point a line should be drawn north to the "Highlands" which divide the rivers that flow into the Atlantic Ocean from those that flow into the St. Lawrence River; along the highlands to the northwestern-most head of the Connecticut River; down the middle of that river to the forty-fifth degree of latitude; thence along that river until it struck the River Iroquois or Cataraquay. On almost every point of this description the two nations placed a different interpretation. What was meant by the "Highlands"? Were they mountains or plateaus or simply any territory that seemed to divert the course of the rivers east and west? What was meant by the Atlantic Ocean? Was

it the Bay of Fundy, the Gulf of St. Lawrence, the Bay of Chaleur? The latter was a point of great importance, as the rivers in that case would be very different, and consequently the "Highlands" through which the line was to run would be differently situated. What was the head of the Connecticut River? There were three streams, each with several branches, each of which might be its source. It was useless to argue as to what the Peace Commissioners intended, as the plain fact was probably that they did not know themselves. Nevertheless, the two nations constantly argued, frequently in threatening fashion. Each nation drew its boundary line. About ninety-seven miles north of the St. Croix source, a straight line would touch certain highlands, which divide certain tributaries of the River St. John falling into the Bay of Fundy, from the waters of the Restigouche. Here, said Great Britain, are our "Highlands," and, from Mars Hill, she drew a zigzag line

westerly. About 115 miles north of the St. Croix source, however, a straight line would strike another ridge, which divides the Restigouche from the waters of the Metis, which fall into the St. Lawrence River. Here, said the United States, are our "Highlands." The territory between the disputed lines was about twelve thousand square miles. It contained the settlements of the Aroostook and Madawaska, which, claimed by both countries, had been the scenes of many conflicts. Each nation also selected, as the headwaters of the Connecticut River, that particular stream by which it would get the largest slice of territory. The forty-fifth degree of latitude was also in dispute. It was asserted that the line already surveyed was inaccurate, and that, if corrected, many American forts would be found to be on British territory. The commission provided for by the Treaty of Ghent having failed to agree, the dispute was referred to the King of the Netherlands, who gave his

award in 1831. He decided that it was impossible to determine between the rival claims, inasmuch as sufficient evidence did not exist to substantiate either one. He therefore drew a line of his own. Of the disputed twelve thousand square miles, he assigned the United States 7,908 and Great Britain 4,119. Both countries refused to accept this decision. They asserted that the King had exceeded his powers; that he had been called upon to decide what the boundary was, as designated in the Treaty of 1783, and not to draw a line arbitrarily, based upon no evidence whatever. So the dispute dragged on. The United States did not have a free hand, as territory of the State of Maine—previously of Massachusetts—was involved. The matter was finally decided, as already said, by Lord Ashburton and Mr. Webster. Their line was a conventional one, not based upon the treaty, and Maine and Massachusetts were pacified by a money indemnity.

In addition to settling the northeastern boundary, the Ashburton Treaty ran the northern boundary from the Lake of the Woods to the Rocky Mountains,—thus, for the first time, finally delimiting on the north the enormous territory purchased from France. The "Oregon question" was left untouched. Since the time that Lewis and Clark had explored this great northwest territory, and John Jacob Astor had established his ill-fated trading post, the possession of Oregon had been a potential source of trouble. It is not necessary to review the familiar story in detail, especially as it is not properly included in our subject. The Oregon boundary was determined, not by arbitrators, but by a treaty negotiated through the usual diplomatic channels. Up to 1846, when the dispute was settled, the United States claimed fifty-four degrees and forty minutes as the northern boundary, while Great Britain proposed to continue the forty-ninth degree line to the

Columbia River, and thence along the river to its mouth. Both nations withdrew from these extreme demands and the forty-ninth parallel was continued to the Pacific Ocean. This treaty, however, was itself the cause of a well-known arbitration. It did not make clear the ownership of the islands between Vancouver Island and the mainland. It was uncertain whether the boundary line ran through the Canal de Haro or the Canal Rosario. The United States claimed the former and Great Britain the latter. San Juan Island was the territory chiefly in dispute, and here there were occasional clashes between the American soldiers and the British officials. The dispute dragged along until 1871, when it was referred to the German Emperor, who decided in favor of the United States. This arbitration is mentioned in a later chapter.

Thus there remained only one contested boundary between the United States and Great Britain—the Alaskan—and that was peace-

fully decided, under the following circumstances. The real intent of the original Treaty of 1825 between Russia and Great Britain setting forth the boundary line of Alaska, had been for years a matter of controversy between the United States and Canada. After many unsuccessful attempts, a convention was finally signed on January 24, 1903, appointing a commission of six impartial jurists named jointly and equally by both parties. The award, which was signed by a majority of the commissioners, though the Canadian members protested, was largely in favor of the United States. While the decision created dissatisfaction in Canada, the award was accepted and carried into effect.

Before we leave the subject of boundary difficulties between our northern neighbor and ourselves, it is fitting to mention the recent interesting understanding reached by the International Waterways Arbitration Treaty between Great Britain and the United States,

which was ratified at Washington on May 5, 1910. Article X of this treaty creates a Board of Arbitration or Joint High Commission, permanent in character, which is to have jurisdiction in certain questions, including rights of all kinds to the use of international waters (the Great Lakes), and the navigation of streams. The *Times* of London comments upon this as a remarkable advance in international affairs.

The large commerce of both the United States and Great Britain has been productive of numerous complications, all of which, with the exception of the spoliations, which resulted in the war of 1812, have been peaceably settled. That war itself was a justification of arbitration, for it failed to decide any of the disputes which had caused it. The Treaty of Ghent was absolutely silent on the questions of impressment and the rights of neutrals. Contrast this with the negotiations resulting from the Alabama cruises, and other troubles

arising out of the Civil War,—all of which were effectually decided by arbitration. The Geneva tribunal, which is the most important in the history of arbitration, will be taken up later. However, this was not the first proceeding to decide damages for British depredations upon American commerce. A commission was provided for by the Jay Treaty in 1794. The abuses that led up to this are a familiar story. In the war which broke out between England and France, soon after the French Revolution, the United States was the helpless victim of both countries. American vessels practically succeeded English in the Atlantic carrying trade, especially between the West Indies and European ports, and the large commerce carried on with France was a tremendous strength to that country in war time. England regarded herself as justified in going to any lengths to break up this intercourse, not even hesitating at the seizure of American vessels. On the other hand, several

ships were fitted out in this country by French agents to prey upon English commerce. The work of Citizen Genet in this direction will be recalled. John Jay was sent to England in 1793 to adjust these and other disputes. His much abused treaty provided a commission to fix damages. This commission met in London in 1796, Christopher Gore and William Pinkney being the American members. John Trumbull, the artist, was chosen as umpire. The commission sat until 1804. There were many interruptions, however, and one serious dispute, as to the commission's competence to decide its own jurisdiction. Lord Chancellor Loughborough, when he was appealed to, said that the commission necessarily had the power to decide what questions it was competent to treat. The proceedings have been strangely neglected by historians, though it was one of the most important in the history of arbitration. American shipowners received damages to the enormous sum of $11,650,000, all

of which was paid to the last penny. Englishmen received awards amounting to $143,428.14. This small sum proved later a valuable investment. It was paid for damages inflicted on British commerce by French privateers fitted out at our ports. The point was precisely the same as that upon which the Alabama claims were based; and this payment by the United States in 1804, placed them in a position to demand similar damages after the Civil War. This affords an interesting illustration of the importance of arbitral decisions as precedents.

Another arbitration took place under the Jay Treaty—that of confiscated debts owed Englishmen before the Revolutionary War. The commission met at Philadelphia in 1797, and adjourned in discord two years later. One of the English commissioners, a Mr. Macdonald, became very unpopular. He acquired the habit of addressing the commission with written opinions, some of which were not com-

plimentary to the United States. When, as a final exasperation, he introduced a resolution declaring that the Colonies had been in a state of rebellion from 1776 to 1783, in contravention of the American theory that the Declaration of Independence made them a free and independent commonwealth, the American commissioners fled in a huff. A treaty was afterwards concluded in 1802, by which the United States paid $3,000,000 in satisfaction of all outstanding debts. Another commission met in 1818 to decide upon the restoration of slaves captured during the war of 1812. Thousands had been carried away and given their liberty by the British; indeed, slaves were tempted, throughout the whole war, to desert. The Treaty of Ghent provided that all captured property should be restored on both sides, including slaves. The clause, however, was unfortunately worded, and was interpreted by the English as meaning that they need only restore the slaves which, at the sign-

ing of peace, remained in their possession in the places where captured. The question was referred to the Emperor of Russia. His duties were rather those of a grammarian than an arbitrator, as he had to decide just what the language of the treaty meant. His decision was entirely favorable to the United States and England paid indemnities for the lost slaves. The existence of slavery made constant trouble for the United States and brought them in conflict with England. American ships, with slave cargoes, frequently came under English jurisdiction, Englishmen always refusing to accept the American contention that they were property.

In 1853 a joint commission was appointed to decide these and all outstanding questions. It met at London and selected as umpire, Joshua Bates, an American, long resident in London, a member of the firm of Baring Brothers. The success of the commission is largely attributable to his efforts. It sat for

two years and heard seventy-five claims presented by Americans against Great Britain, and forty by Englishmen against the United States. The total awards in favor of the United States amounted to $329,734 and the total awards in England's favor to $277,102. The most celebrated case was that of the brig *Creole*. This ship arrived at Nassau in the Bahama Islands in November, 1841, with 135 slaves aboard. The negroes had revolted, wounded the ship's master and mate and killed one of the passengers. At Nassau the United States Consul demanded that the British Governor detain the murderers and prevent the escape of the slaves. While the matter was under investigation a mob of Bahamian negroes went out in boats and supplied the slaves with clubs. The Governor, however, interfered, went aboard the *Creole,* sent ashore the slaves implicated in the murder and calling all the others on deck told them that they were free to go where they willed. The

British Government supported the Governor, asserting that property in slaves was not recognized anywhere on British territory, and that slaves, coming under English jurisdiction, necessarily became free men. By the decision of the umpire, however, England was compelled to pay an indemnity.

Sundry private claims between the subjects and citizens of the two countries arising out of the Civil War were referred by the Treaty of Washington to a mixed commission consisting of three members appointed by Great Britain, the United States, and by the two conjointly. The final award directed the United States to pay to Great Britain the sum of three hundred and eighty-six thousand pounds sterling.

Right here it is interesting to consider the agreement reached with Great Britain last year to refer pecuniary claims between Great Britain and the United States to arbitration. The agreement includes claims dating back

before 1812, and general claims which have arisen since 1853, those which arose between 1812 and 1853 having been settled by the commission in 1853, and those connected with the Civil War having been settled by the commission just mentioned. Under the pending agreement, the arbitral tribunal is to be constituted in accordance with The Hague Convention, each party appointing an arbitrator, and the umpire to be named by them jointly.

The Treaty of 1783 gave Americans the right to fish off the Grand Banks, the Gulf of St. Lawrence and other places, and to cure and dry fish in the unsettled bays, harbors and creeks of Nova Scotia, the Magdalen Islands and Labrador. These privileges were lost by the War of 1812; but, in a convention, signed in 1818, American fishermen were given access to the fisheries off Newfoundland, while Great Britain was given access to all the in-shore fisheries along the eastern

coasts of the United States north of the thirty-sixth parallel of latitude.

One point in the 1818 convention, however, was made the subject of a special commission. Both nations were kept out of the "rivers and mouths of rivers" belonging to the other; but what were rivers and mouths of rivers? The St. Lawrence, for example: where does its "mouth" begin? Inlets, harbors and creeks were at one time and another declared to be rivers and the fishermen of the two countries constantly clashed. In 1855 a commission was organized but did not finish its work until 1866. The whole coast line of both countries was examined. Two hundred and twenty-one separate places were surveyed and of these one hundred and five were decided upon as reserved by the convention of 1818 from the common fishing grounds. The recent arbitration at The Hague of the vexed questions growing out of the Treaty of 1818 is taken up in a later chapter.

The Treaty of Washington of 1871 provided for four arbitrations: 1, The Alabama Claims; 2, the adjudication of private claims growing out of the Civil War; 3, the Halifax Commission, and 4, the settlement of a boundary dispute. The second and fourth have already been discussed. We will now discuss the first and third.

The Joint High Commission, which negotiated the Treaty of Washington, met on February 27, 1871. The old dispute as to the fisheries was taken up and in the Treaty agreed upon. By article XVIII certain liberties as to fishing were restored, while article XIX granted privileges to British subjects in American waters. The reciprocity gave free fishing to the United States in exchange for the abolition of duty on Canadian fish imported. It was claimed by Great Britain, and denied by the United States, that the privileges thus accorded were of greater value to the Americans and it was, therefore, provided

by article XXII that commissioners should be appointed to determine what, if any, compensation ought to be paid by the government of the United States to the British government for the privileges granted by article XVIII. Three commissioners were to be named, one by the United States, one by Great Britain and a third conjointly, or if the two parties failed to agree as to an umpire within three months, the Austro-Hungarian representative at London was to select him. Owing to the pendency of the negotiations for the reciprocity treaty, by one article of which the articles of the Treaty of Washington would become null and void, but which treaty the Senate finally advised against adversely, it was not until 1875 that the two commissioners were appointed—Sir Alexander T. Galt as the British commissioner and Mr. Ensign H. Kellogg as the American. The Austro-Hungarian Minister at London, with whom the selection of the third commissioner rested, named—

upon intimation of the two governments—the Belgian Minister at Washington, Mr. Delfosse, the indisposition on the part of the American government at an earlier date to accept him seeming to have been overcome. Upon meeting, the commissioners first drew up rules of procedure. We have not sufficient time to take up in detail the long discussions and arguments as to the compensation claimed by the British and the American responses. On the 23d of November, 1877, Mr. Delfosse, the President of the Tribunal announced its award—that the United States should pay Great Britain the sum of five and a half million dollars in gold. The award was signed by the British commissioner and by Mr. Delfosse. The American commissioner dissented on the ground (1) that the advantages accruing to Great Britain under the Treaty were greater than those accruing to the United States, and (2) that under the terms of the Treaty it was questionable whether the Tri-

bunal was competent to make an award except with the unanimous consent of its members.

The President submitted the entire correspondence to Congress. That body appropriated the sum of five and a half million dollars to be paid to Great Britain, if, after representations had been made to that government, the President should deem it his duty to make the payment.

Mr. Fish in an instruction to the American Minister at London reviewed the reasons why the American government considered the award unjust and invalid. The reply of Lord Salisbury argued that the commissioners had gone thoroughly into the discussion of the case and that the award should be accepted. He cited Halleck, Bluntschli and Calvo to the effect that the decision of a majority of the arbitrators binds the minority unless it is stipulated to the contrary in the treaty of arbitration. He also contended that the form and constitution of the tribunal indicated the inten-

tion of the contracting parties that a majority should be competent to render an award. On the 21st of November, 1878, the President delivered to the British government through the American Minister a draft for the amount of the award. In so doing he stated that the payment was made as an evidence of the American government's desire to place the maintenance of good faith in treaties and the security and value of arbitration between nations above all question. Yet the old controversies as to fishing rights and the interpretation of the Treaty of 1818 disturbed the friendly relations on our northern border. It is only a few months since the close of another memorable arbitration—that of the north-eastern fisheries which will be discussed in a later chapter.

We will now consider the arbitration which stands as a beacon light in the history and growth of the pacific settlement of controversies, namely, the Alabama Claims Arbitration.

Acute difficulties having grown out of the acts committed by several vessels, prominent among them the *Alabama,* privateers which had been fitted out, armed or equipped within British jurisdiction during the American Civil War, the Treaty of 1871 referred the dispute to a commission to be composed of five members, nominated by America, Great Britain, Italy, Switzerland and Brazil. The commissioners appointed were Mr. Charles Francis Adams, Sir Alexander Cockburn, Count Sclopis, Mr. Jacob Staempfli, and Viscount d'Itajuba. Mr. J. C. Bancroft Davis and Lord Tenterden, respectively, represented as agents the United States and Great Britain. The tribunal met at Geneva, December 15, 1871, and Count Sclopis was made President. The United States claimed damages both for direct and for indirect losses, and for injuries occasioned by the privateers named. The tribunal allowed only direct losses caused by the *Florida* and *Alabama,* with their tenders, and by

the *Shenandoah* during a part of her cruise. The award of the tribunal rendered September 14, 1872, amounted to $15,500,000 in gold as indemnity to be paid by Great Britain to the United States in satisfaction of all claims referred to the tribunal. The English representative cast the only dissenting vote, but Great Britain accepted the decision and paid the award within a year. During the course of the arbitration, the American government had held the ground that a neutral nation is bound by the principles and doctrines of international law, independently of municipal regulation, to use all the means in its power to prevent its territory from being made the base of military operations by one belligerent against the other. The British government denied any responsibility beyond the then existing statute, known as the Foreign Enlistment Act, which by trial in the courts had proved practically a dead letter.

In the Joint High Commission, which nego-

tiated the Treaty of Washington in 1871, referring the Alabama Claims to arbitration, the United States commissioners would not agree to arbitration of these claims unless "the principles which should govern the arbitrators were first agreed upon." This proposition was accepted and the rules governing the arbitrators drawn up. Articles I to XI of the Treaty refer to the Alabama Claims and article VII contains the important "Three Rules," which are as follows:

"A neutral Government is bound;

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially

adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

In the same article, Great Britain denies these rules to have been part of international law when the acts complained of were done, but consents for reasons of comity to their retroactive effect. The article concludes by binding the contracting parties to observe the rules and to invite other powers to accept them.

It may be remarked that the acceptance of these rules has never been announced by other

powers, nor has there been any general agreement as to their interpretation.

In the arbitration two distinct questions arose upon the submission of the case:

1. As to what matters were submitted by the treaty to arbitration;

2. By what rules and principles of law the arbitrators were to be guided.

The consideration of the former of these questions threatened for a time to interrupt the arbitration. In the case submitted by the United States certain claims were for "direct" losses or damages, and others for "indirect" losses. The indirect losses were said to embrace the losses in the transfer of the American commercial marine to the British flag, higher insurance, prolongation of the war and additional cost of the war.

These claims caused much dissatisfaction in England, and the British agent asked for an adjournment pending formal consideration of the point. The difficulty was finally settled

by the President of the tribunal announcing that the arbitrators, without deciding whether these claims were included in the treaty, had arrived at the conclusion that they had no foundation for an award or compensation under the principles of international law. This matter settled, the arbitration went on.

In the decision the principle was announced that "due diligence should be exercised by neutral governments in exact proportion to the risks to which either one of the belligerents may be exposed by failure to fulfill the obligations of neutrality on their part."

The fur seal arbitration is too recent to require detailed comment now. The controversy began in 1886. The United States acquired all Russia's rights in Behring Sea when it purchased Alaska in 1867. The most important of these was the reservation of the Behring Sea seals. These spent a considerable part of the year breeding on the Pribilof Islands, American territory. Whenever they ventured

beyond the three-mile limit, however, they were freely taken by the Canadian sealers, and frequently killed with firearms. Female seals, when pregnant, were the greatest sufferers and the extinction of the whole breed was feared. Consequently the United States revenue cutters patroled Behring Sea during the breeding season, and for several years seized many Canadian ships. Acrimonious disputes followed, which constantly threatened friendly relations. England's contention was, that as long as the seals were captured on the high seas, outside the three-mile limit, the United States had no right to interfere. The American government claimed that inasmuch as the seals all came from the Pribilof Islands, indisputably American territory, such a right existed, especially as the question of the total preservation of the Pribilof seals was the real point at issue. The subject involved the nicest points of international law, and was properly submitted to arbitration. The award was

against the United States. They had no exclusive right, said the arbitrators, of property or protection in fur seals frequenting American islands in the Behring Sea, when found outside the three-mile limit. The commission then adopted regulations for the protection of the seals, the most important of which was that no seals should be killed, captured or pursued at any time, within sixty miles of the Pribilof Islands. Thus, the main point—the preservation of the Pribilof seals—was satisfactorily adjusted.

This chapter has been devoted to the arbitrations which the United States has had with England, because of their greater importance, both to history and to the general subject. The United States has, however, submitted to arbitration numerous disputes which have arisen with countries other than England, notably, with France, Spain, Mexico and Central and South American countries. Some of those arbitrations have been of great importance in

settling questions of procedure and certain of them will be referred to in the following chapters, especially the arbitrations which have been held at The Hague.

Chapter III

In the preceding two chapters I have sketched the history of arbitration, and also described, in some detail, the most important arbitration proceedings to which the United States has been a party. These historical facts, disconnected as they may seem, furnish grounds for certain general conclusions. Though no one would contend that there are any immutably fixed principles governing arbitration, I think that it is evident that the nations which have most conspicuously adopted this method of settling their differences, have also clearly indicated the particular kinds of differences which they regard as susceptible to peaceable adjudication. At the present time this subject is by no means purely academic. Arbitration and arbitral tribunals are rapidly assuming a practical importance. Nearly all the European nations have subscribed to arbitration treaties of some kind,

and the United States has just framed agreements with Great Britain and France, the acknowledged purpose of which is to substitute arbitration for war in all cases. To what extent, therefore, does the experience of history indicate that these humanitarian dreams may be realized? As a matter of principle, precisely what are the types of disagreements which civilized nations so far have a willingness to submit to the judgment of half a dozen men gathered around a table? Such an analysis ought to shed much light upon an almost unstudied subject—the psychology of international relations.

In treating possible grounds of quarrel it has been customary to divide them into three classes. The first comprises the acute difficulties which deeply concern national interests, independence or honor. The second are those which involve the interpretation, operation and effect of existing treaties—disagreements that really involve business or legal

questions. The third includes the largest class —the adjustment of claims for damages made by the citizens of one country against the citizens or government of another. In this latter class the protesting government is not really interested itself, except in so far as it is its duty to protect its citizens against the depredations of the people or the government of another nation. It acts merely as an agent and cannot itself materially profit or lose from the transaction. These three classifications, as I shall show, are by no means exact, as one type of dispute may overlap or include features of another. The classification, however, does represent real divergences and is, besides, extremely valuable as furnishing a ground work for discussion.

In defining the scope of arbitration, writers on international law have customarily excluded what I have here described as the first class; the questions involving "vital interests and national honor." If I had been writing

these lines a year or two ago, I should have said that these questions had no place in a historical review of the subject. The whole literature of arbitration, as well as the phraseology of the treaties concluded in the last ten years, have specifically excluded controversies of this type. The first attempt at an arbitration treaty between Great Britain and the United States, made in 1897, removed these topics from consideration. The tentative draft for compulsory arbitration drawn up at the first Hague Conference likewise specifically excepted national honor and interest. In the last ten years the several European nations and the United States have concluded many arbitration treaties, but all of them, except those just concluded between the United States and Great Britain and France, have excluded these questions. The phrase now usually adopted is "national independence, vital interests and national honor."

Indeed, that disputes involving any of these

factors can properly be settled in only one way, by war, has become an axiom of international law. The events of the last few months, however, seem to indicate that this attitude may not entirely have been devoid of superstition. Was the exception a principle that had been thought out thoroughly, or was it merely a phrase, a rule of international conduct, based, like so many rules of personal conduct, not upon definitely comprehended and accepted reasons, but upon preconception and prejudice? The specific instances of arbitration given in the preceding chapters throw some light upon this point.

That there is something not entirely reasonable in the exception of "independence, vital interests and national honor" as subject-matter for arbitration, is evident in the vagueness with which these terms are used. No one has yet attempted to define precisely what they mean. We can form some clear perception of what may be included in the two classes of

disputes, generally regarded as properly arbitrable—interpretations of existing treaties and damage claims—but no one, I think, has yet formulated any hard and fast rules as to what constitutes "independence, vital interests or national honor." The Hague Conference, in drawing up its plan for compulsory arbitration, made no attempt to do this. The question was suggested, but the delegates decided that every nation should settle for itself whether the particular dispute at issue came within the prohibited class. The effect of this ruling, as was pointed out at the time, was simply to destroy any scheme of arbitration that might be adopted. That, indeed, is the one powerful argument against incorporating these exceptions in arbitration agreements. I defy anyone to suggest any dispute that might conceivably arise between two nations, that cannot be interpreted as affecting its independence, its vital interest or its honor. Nor will it be usually necessary to split hairs in

order to do this. These terms are as general in their meaning as the terms "good" and "evil," and are as susceptible to as many personal interpretations. National codes of honor differ as greatly as do personal codes. In 1902, Venezuela at first refused to arbitrate claims for damages made by citizens of the United States on the ground that arbitration was inconsistent with the nation's honor, as it necessarily infringed its sovereignty. The fact that Venezuela afterward changed its mind and arbitrated these same claims shows that "national honor" is not the immutable quantity it is usually supposed to be, and greater nations than Venezuela have executed a *volte-face* on this particular point, as I shall show.

The first of these orthodox exceptions—disputes involving national independence—seems susceptible enough of definition. If Great Britain should sail its fleet into New York Harbor and solemnly reassert its right to the sovereignty which it once enjoyed over Ameri-

can soil, it would be clear enough that His Britannic Majesty was asserting a claim which encroached upon our national independence. Most of us would likewise agree that the American government would hardly be justified in submitting such an absurd question to arbitration. When Napoleon the Third sent Maximilian to Mexico and established the Mexican Empire, he was guilty of an act, which, if successful, would have destroyed Mexican independence. No fair man could have criticised the Mexicans as foes to peace, if they had refused to subject this question to an impartial arbitral tribunal. But these cases are extreme; in the present stage of civilized public opinion, they seldom happen. There are plenty of other acts which may affect a nation's independence in a lesser degree, which may be, and indeed have been, matters of arbitration. Indeed, unless the word "independence" is defined, it can have no meaning as affecting international relations.

Nearly every act of depredation inflicted by one nation against another is a blow aimed at its sovereignty, and so may be construed as a blow at its independence. The assaults made upon American commerce by France and England during the Napoleonic wars were resented here, not only because we suffered great material injury, but because these acts were regarded as insults aimed at our national independence. Yet these same spoliations were submitted to arbitration. They did, indeed, lead to war with England—though not with France—but that war decided nothing on these particular points. Such satisfaction as the country ultimately received we obtained before arbitral tribunals.

"National independence," however, is definiteness itself when compared with national "honor." This term is absolutely inclusive. There is no act of a government or its agents in which honor does not play some part. National disputes, by their very terms, involve

questions of injustice or contempt—and certainly every such act can be regarded as involving honor. And nations have never hesitated to set up such claims. A crowd of drunken sailors from a warship becomes involved in a street brawl in some foreign port, as a result of which they spend a sobering night in the local jail. Any man skilled in diplomacy finds no difficulty in twisting this into a question of national honor. Practically every question involving independence, vital interests, damage claims, also involves questions of honor. Cases which involve national honor, alone and distinct from other grievances, are extremely rare,—questions, that is, which involve some gross insult to a nation's dignity, as separate from some act affecting its material interests. I suppose if a Chief Executive of our government should publicly make some grossly insulting statement about Great Britain or its Sovereign, he would have offended the English sense of national

honor, though I doubt whether the act would lead to war, or even to arbitration. Not infrequently national flags are subjected to indignity by citizens of other countries, but these happenings seldom have serious consequences. There are certain aggressive acts, however, which do affect national honor, as distinct from other interests and which may lead to serious trouble. The most celebrated instance in our own history is, I think, the Trent affair. In this case, an American sea captain boarded a British vessel and seized two citizens of the Confederate States who were on their way as official emissaries to England. In itself this was an act of no particular consequence. It affected no national interest of England. It did not make the British Empire a shilling poorer; it did not deprive it of an inch of territory. It was simply, on the part of the American shipmaster, an act of naval highwaymanship—a direct insult to the British flag and to British honor. And

it came within an inch of causing a fearful war between England and the United States. I suppose a proposal on the part of Secretary Seward to arbitrate would have been followed by an actual declaration of war. England's honor was at stake, and only a disavowal and an apology—which were eventually made—could satisfy it. This is the best illustration in our own history I can make of one of these cases of honor *per se,* which, under the classical rule we are discussing, have not been regarded as proper subjects for arbitration.

We are face to face with the same difficulty when we attempt to frame a definition of "vital interest." Sometimes the phrase is merely "national interest"; more generally, however, the qualifying word "vital" is used. This word, however, does not especially help us out. In practical terms what can we properly regard as one of these "vital interests" not susceptible of peaceful adjustment? Evidently almost anything which the nation in-

volved chooses to look upon as such. An infringement of national sovereignty certainly may be treated as a "vital interest," perhaps the most "vital" of all. But nations certainly have submitted such disputes to arbitration, even after protesting that their dignity as a sovereign power was involved. I have already cited the case of Venezuela in 1902 and could, if necessary, refer to many more. What we have chiefly in mind, however, in speaking of a "vital interest," is probably the national domain. To threaten a nation with loss of territory over which it has exercised jurisdiction, is unquestionably to interfere with what it regards as a "vital interest." All civilized nations guard so jealously their territory, that as I shall show in some detail, most of them have provided that it can not be alienated except by consent of the legislative body, which, in some degree, represents the people. In spite of this, nations have frequently submitted to arbitration disputes over land in

which they have claimed and actually exercised jurisdiction. There is not an inch of boundary line between the United States and Canada, including the Alaskan border, that has not been the subject of disagreement. In the disputed borders both nations have asserted jurisdiction, and, in many cases, directly exercised it. Both nations have not had the slightest difficulty in showing clearly that their "vital interests" were involved in every case. Each dispute, that is, properly came within the prohibited class, and could be settled only by war. And yet, as I have shown, every inch of this boundary line has been made the subject of peaceable negotiation,—nearly the whole of the line has been drawn by arbitral tribunals. It forms not only, as already said, an impressive monument to arbitration, but also disposes of the superstition that questions involving "vital interests" cannot be settled by peaceable means.

But indeed, our whole national history fur-

nishes abundant evidences that the disputes usually prohibited—independence, honor and vital interests—have repeatedly formed the subjects of arbitration. The most famous arbitration in history, that involving the Alabama Claims, furnishes an especially eloquent illustration. That a nation cannot transform itself into a base for the creation of a navy intended to wage war upon another nation with which it at peace,—in the present stage of international opinion, this principle is adopted as a matter of course. It is difficult to realize that, half a century ago, the greatest maritime nation, by her acts if not her words, was maintaining that to do this involved no breach of international friendship. We all remember that for several years England refused to arbitrate the Alabama Claims, but it is of especial contemporary interest to recall precisely the grounds for this refusal. It was because "British honor" was at stake! "It appears to her Majesty's government,"

said Earl Russell, in declining to arbitrate these claims, "that neither of these questions could be put to a foreign government with any regard to the dignity and character of the British crown and the British nation. Her Majesty's government are the sole guardians of their own honor." Indeed, England for several years refused to take the proposal seriously; the English people regarded the proposition merely as an especially preposterous exhibition of Yankee "shrewdness" and "cuteness." Eventually, however, England changed her mind and decided to submit to arbitration a question which she had officially declared affected her "national honor"—did the very thing, that is, which the modern enemies of general arbitration declare no self-respecting nation will ever do. Moreover, in the treaty agreeing to arbitrate the Alabama Claims, England made a formal apology and acknowledgment of guilt,—something which, six years before, would have been regarded as the ex-

treme of national humiliation. Unquestionably during the entire period that the Geneva Tribunal was sitting, the larger part of the English people regarded the proceedings as an insult to the British flag. Sir Alexander Cockburn, the English representative on the court, attempted to avoid serving, and, failing in this, tried to bring the proceedings to an abrupt close. In doing this, he was acting from what he regarded as patriotic motives, as he believed that the submission of this dispute was a stain on the honor of his country. When the decision went so overwhelmingly against England, this feeling was heightened. The world would believe, the average Englishman reasoned, that England had paid $15,000,000, to escape a war with the Yankees! England was "afraid to fight," and had "backed down." There is not the slightest doubt that the Geneva Tribunal greatly impaired the prestige of the Gladstone administration. All this shows how mutable is the feeling of

"national honor." There is probably no thinking Englishman to-day who regards the Alabama arbitration as anything but an honor to his own country, and who does not look upon the attitude of the American people during the tedious years of negotiation as a highly creditable illustration of national self-restraint.

All this emphasizes the fact that these so-called exceptions to arbitrate disputes—those involving "independence, honor and vital interest"—are more or less illusory. The history of arbitration shows, indeed, that disputes involving these ideas have constantly been submitted to peaceful adjudication. It remains to examine the other two divisions which, in the minds of all people, do come within the scope of arbitration.

The question of the interpretation of treaties involves no great difficulty. We have had plenty of treaties in our own history which have been contradictory or indefinite and have thus furnished endless matters of disagree-

ment. Obviously there is only one reasonable way of deciding these questions,—either by diplomatic negotiation or by arbitration. Our own differences with England over the northern boundary have arisen, in many instances, because of the interpretation of existing treaties. The agreements, originally defining these boundary lines, have frequently been based upon misinformation. Many times the territories delimited have been unknown by white men; in other cases the surveys or maps upon which the treaties have been based were inaccurate. The century old disputes about the Newfoundland fisheries present another striking illustration of the same type of arbitration. The Fisheries Treaty of 1818 had been found, in actual practice, to be vague and inconclusive in several important points, and it remained for an entirely new arbitration, recently concluded before The Hague, to readjust the whole situation.

There remains the third general class of

international difficulties,—those caused by the claims of the citizens of one country against the citizens or government of another. As the historical review presented in a previous chapter shows, these constitute the subject-matter of the larger part, not far from four fifths, of the arbitrations to which the United States has been a party. Practically all authorities now assert that differences of this kind, no matter how exasperating, can never justify war. Upon this point international sentiment—for there is a steadily growing body of international opinion—has advanced remarkably in the last few years. It is improbable that this international sentiment would justify even the mild form of hostilities—the so-called peaceful blockade—entered into by England, Germany and Italy against Venezuela in 1902; certainly public opinion in this country would not tolerate it. The last Hague Conference adopted an important convention which covers this point. The extent to which a

nation may be justified in using force against another for the collection of contract debts was thoroughly discussed. The recent Venezuela entanglement, of course, was fresh in everybody's mind; and a notable communication from Dr. Luis M. Drago, Minister of Foreign Affairs for the Argentine to the Argentine Minister at Washington—a letter which promises to make Dr. Drago as famous in Pan-American diplomacy as President Monroe's message of 1823 has made that statesman—formed the basis of discussion. Dr. Drago's letter had been addressed, December 29, 1902, to John Hay, Secretary of State. It protested, with great dignity and force, against the recent so-called peaceful blockade of Venezuelan ports. Dr. Drago divided into two classes the kinds of claims which one nation, in behalf of its citizens, might set up against another. One represented claims caused by the failure of a nation to protect sufficiently the property or citizens of

another—a failure which, in the case of several South American republics, is the consequence of their frequent revolutions and disturbances. Dr. Drago eliminated these claims from consideration. What he protested against was the use of force to collect public debts—that is, debts caused by defaults in the principal or interest of national bonds. On this subject Dr. Drago formulated, in remarkably clear and conclusive language, the convictions of most authorities on international law. In the matter of public loans, the foreign capitalist is merely a money lender. In making these loans, the banker takes into consideration all the factors necessary to such transactions. The most important is the likelihood that they will be paid. The credit of the nation in question is always reflected in the terms of the loan; the rate of interest, the premium, and so on. The credit of the nation is also reflected in quotations in the markets of the world. The penalty of repudiation, of course, is sim-

ply the loss of credit. These matters being thus automatically regulated, it is absurd for the bankers, when loans are unpaid or repudiated, to attempt to transform their government into a debt-collecting agency. It is beneath the dignity of any nation to use its naval and military forces as bailiffs. Moreover, it is a dangerous precedent. The average nation would regard with contempt a request that it guarantee in advance the loans in which its subjects are about to engage with a foreign power; and yet does it not amount to practically the same thing when it forcibly collects such debts after they have been made?

The injustice of the whole proceeding appears when we recall that this method of bill collecting is used only against weak and unprotected powers, though these are not the only ones that have defaulted. Certain states of our own union have a bad record in this regard, but no foreign government has ever thought of using force against them. Many

European nations have also failed to meet their interest promptly, but have not been dunned by battleships. Dr. Drago asserted that the acceptance of his position by the United States was an essential corollary to the Monroe Doctrine. Contract obligations of this kind furnished a constant threat of aggression. They were the most available excuse which Europe could find for the permanent occupation of South and Central American territory. Dr. Drago might have cited, as an illustration of his contention, Napoleon's occupation of Mexico, which, when it started, was ostensibly a debt-collecting expedition.

The United States earnestly supported Dr. Drago's doctrine, and succeeded in persuading The Hague Conference to adopt it. As a result, all the signatory powers are now pledged to refer contract obligations to arbitration. They have agreed not to employ force unless the offending nation refuses to arbitrate, or,

after agreeing, refuses to proceed with the arbitration. This new principle is thus now a definite tenet of international law.

The other class of claims rests upon an entirely different basis. When a government appropriates property belonging to citizens of a country with which it is at peace, who happen to be sojourning within its own confines, or permits its own citizens to do so, it unquestionably furnishes a *casus belli.* Every nation enjoying treaty relations with another is bound to protect the lives and property of the latter's citizens. This principle, of course, is fundamental; international relations obviously could not exist unless it were accepted. It is now generally recognized, however, that these disputes should not lead to hostilities until all resources of diplomacy and arbitration have been resorted to. There are excellent practical reasons for this. Experience shows that it is wise for any government to scrutinize closely claims made by its citizens

against foreign nations. They are likely to be exaggerated and even fraudulent. When such claims are arbitrated, the awards are commonly disproportionate to the damages claimed. Cases have been known in which the indemnities, after a careful consideration of the evidence, have shrunk to less than one per cent of the claims. About fifty years ago a certain Don Pacifico nearly plunged Europe into a general war. Don Pacifico was a Portuguese Jew, who, being a native of Gibraltar, was a full-fledged British subject. In an anti-Jewish outbreak at Athens, Don Pacifico's house was attacked by a mob and certain of his property destroyed. He appealed to the British government; the British government demanded reparation of Greece; Greece appealed for protection against England to France and Russia—these being two of the powers that had guaranteed her independence —and soon the whole of Europe was a seething mass. Subsequent events disclosed that

Don Pacifico was little other than a common swindler, who, in order to collect extravagant damages for very insignificant losses, came near bringing on war between England, France and Russia. He had demanded nearly $300,000 for the loss of a few articles of household furniture—although he was poor and lived in an extremely humble fashion—and other losses which turned out to be purely imaginary. The arbitrators finally awarded him about $10,000, which was undoubtedly excessive. All claims are not like Don Pacifico's; but the episode illustrates the absurdity of settling such difficulties in any other way than by arbitration. Indeed, it is almost inconceivable to-day that civilized nations should adopt any other method.

The distinctions between the three grand divisions of arbitration—those affecting honor or national interest, those affecting the interpretation of the treaties, and those affecting damage claims—are well recognized in the

procedure leading up to arbitration. As we have three different subjects for arbitration, roughly speaking, so do we have three different kinds of international agreements providing for them. The most solemn compact which one nation can make with another is a treaty, and we shall find that arbitrations involving the most vital matters are always arranged by treaty. The Treaty of Washington, for example, was an agreement providing for the arbitration of the Alabama depredations. The fundamental laws of all countries recognize the solemnity of treaties. In Great Britain the treaty-making power is, in a general way, one of the prerogatives of the Crown. The Crown can exercise its prerogative, however, only upon the advice of the Cabinet, through one of the principal secretaries of State. In the effect given to the Constitution of England, treaties changing in any way the law of the land or creating a charge upon the people, or affecting the finances of the

country, can only become operative by an act of Parliament. The Sovereign can alienate territory acquired by conquest during a war, but he cannot alienate territory which has once been subject to the legislation of Parliament. The general principle here is that Parliament must act in all matters of vital importance.

In Germany treaties having relation to matters of imperial legislation must have the consent of the Bundesrath and the approval of the Reichstag. The fundamental law of Italy provides that the King alone can negotiate treaties, but that treaties which involve financial obligations or affect the territory of the State, must have the consent of the Italian Chambers.

In Spain and in Portugal all treaties must be approved by the legislative bodies. In Greece the King makes treaties, but treaties granting concessions of compromises or commercial rights must be approved by the Boulé.

In Denmark the Constitution vests the treaty-making power with the King, except as to the alienation of territory or change in public law relations. In the United States, all treaties, as we know, must be approved by the Senate.

These constitutional limitations, in other words, uniformly reserve for the approval of the legislative bodies of the respective countries, any agreements that affect the political independence or the vital interests of the respective countries. This is generally regarded, as otherwise a nation's interests might be jeopardized by the mistake or negligence of its plenipotentiary.

There are other kinds of agreements, however, which are not so sacred. Thus a convention is a compact or agreement of less dignity or importance entered into between nations through their duly constituted agents. Then there is the protocol, which is a diplomatic document, minute or agreement between

nations, somewhat similar to a convention, setting forth the results of a business negotiation, and less formal than a treaty, and to some extent less so than a convention. These distinctions are not modern, but have grown up with the growth of arbitration and are founded upon exactly the same distinctions which I have already described. I do not assert that these three kinds of agreements correspond exactly to the three classes of arbitral questions, for matters of the second or third class may be made the subject of a treaty. These three kinds of agreements, however, had their origin in these distinctions of fact.

In using, therefore, in the Constitution of the United States the word "treaties," instead of the general term "agreements," the intention was clearly to recognize these then existing distinction of terms, and to provide that only that class of agreements with foreign nations should be submitted to and approved

by the Senate which were of the most solemn and formal character. Our constitutional limitation is a most necessary and pertinent one. Questions affecting the vital interests, the independence or the honor of a nation, or the making of agreements which should become, as it were, a part of its organic law, binding and controlling its subsequent conduct as a nation, and standing as the paramount law of the land, are necessarily so important that they should be submitted for the joint action of such departments of the government as is necessary to make them represent the action of the sovereign people. But this necessity does not apply to disputes of a purely business character, or those which arise between different nations in the carrying out of their existing treaties. They do not apply at all to that class of disputes in which the government of a nation comes forward, acting merely as the agent for and to protect its own citizens in the enforcement of claims against

the government or the citizens of another nation. In the matter of such claims, the function is of purely executive character and falls within the province of the executive power. Whenever the government of the United States has been called upon in recent years to protect the rights of its citizens against foreign countries or their citizens, this interpretation of the constitutional provision has been adopted in actual practice. If these claims affected in any way the general relations of our nation with another, or if the payment of any money by the United States was involved, we have usually submitted them to arbitration after getting the approval of the Senate. Otherwise the President has uniformly submitted such questions to arbitration from time to time by protocol only, and without taking the advice or submitting such agreements to the approval of the Senate. In one well-known instance, indeed, the President did take the advice and consent of the Senate.

This was the protocol adopted with Venezuela in 1859, which submitted to arbitration claims of our citizens for injuries suffered as a consequence of their expulsion from the Aves Islands by the Venezuelan Government. President Buchanan referred this matter to the Senate. "Usually," he said, "it is not deemed necessary to consult the Senate in regard to similar instruments relating to private claims of small amount, when the aggrieved parties are satisfied with their terms." He considered it necessary, however, to submit this agreement on account of the prevailing unstable governmental conditions in Venezuela. As a matter of fact, however, the executive branch of the government of the United States has the independent power, both in principle and practice, to enter into protocol agreements with other nations, submitting to arbitration that class of cases involving the claims of citizens of the United States against another government, or the citizens of the lat-

ter. In principle the same is equally true and should be applied to what we have called the second class of cases, that is, those disputes which may arise between governments themselves as to matters of minor importance, not involving the important interests of either. Cases of this character, however, do not frequently come up, and when they do, they are generally interwoven with questions of vital importance, making the whole subject a proper matter for a treaty. There is, therefore, no settled practice as to the power of the Executive to refer such minor and unimportant questions arising with another nation to arbitration.

In the last century, we have not only accumulated a mass of precedents on the subject-matter of arbitration, but have developed well-defined methods of procedure. In the settlement of the third group of difficulties, in particular, we have now a fairly regular, uniform and direct process of judication. Commis-

sions for the settlement of such questions have probably dealt with four fifths of all arbitrations and as each succeeding commission has proceeded—particularly commissions to which the United States has been a party—it has followed more or less closely the rules adopted by its predecessors, until now there is a generally recognized method of getting results. The other classes of disputes have been comparatively few and each matter has involved, more or less, different points. This explains the fact that each proceeding is practically a law unto itself and frames its own rules. The Hague Tribunal, however, is gradually evolving principles applicable to these cases, so that eventually there will be a method of procedure as orthodox as that followed in the case of claims.

The first step taken by one who wishes to appeal his case to a special international commission is to file his claim with the proper department of his government in a manner

and form which is usually prescribed. This form commonly follows the general rules which have been adopted by commissions established for the settlement of like claims. The claimant memorializes his government in a sworn statement setting forth the facts and circumstances upon which he bases the claim. This statement must show not only the facts and circumstances, but also the amount. The claimant must state whether he owns the claim himself or has obtained it by assignment. He must give all the details: the character of the injury suffered, the principles and causes which lie at its foundation, and any essential fact connected with its history. He must support his memorial by original and properly verified papers. Any testimony he submits should be in writing and affirmed or sworn to, in accordance with the laws of the place where it is taken, before a proper officer who has no interest in the claim. If the claimant is a

naturalized citizen he should produce a certified copy of his naturalization papers.

When the claim has been filed in proper form, it is usually presented to the commission by an agent appointed by the government of the claimant. In arbitrations of lesser moment, it is customary for the agent to act as counsel also, but in the more important questions, counsel are usually employed in addition to the agent. Usually the treaty or protocol under which the arbitration is organized sets forth to some extent the duties of agents and counsel. The tribunal, however, adopts rules of its own and makes various orders specifically defining the duties of agents and counsel in the disposition of business.

The success of the arbitration sometimes depends upon the care and exactness with which the protocol of procedure or *compromis* is drawn up. There have been many arbitrations in which the terms of the protocol have not been clear. In these cases one and

sometimes both parties have declared that the awards have exceeded the power of the arbitrations in which the terms of the protocol have not been clear. In these cases one and sometimes both parties have declared that the awards have exceeded the power of the arbitrator or ignored the provisions of the protocol. An interesting instance is the Orinoco case, recently re-submitted to arbitration, which will be discussed in the last chapter.

In the orderly course of procedure, the first act of the arbitration tribunal is to organize in accordance with the treaty or protocol creating it. The commissioners and umpire take oaths to examine carefully and decide impartially all questions. The tribunal then preceeds to appoint secretaries and such other officials as may be required for the transaction of the business to come before it. It then prepares rules of procedure, though some commissions have gone on without any definite set of rules, relying upon orders enacted from

time to time as required. There were no rules adopted by the claims' commission organized under articles VI and VII of the treaty between the United States and Great Britain of November 19, 1794, commonly known as the Jay Treaty. In this case orders were made as needed. Similarly the tribunal created by the convention of 1822 between the United States and Great Britain to settle the question of indemnification for slaves carried away by British forces made such orders as occasion demanded. The Mexican Claims' Commission of 1839, for the settlement of all claims of citizens of the United States upon the Mexican Government, proceeded with practically no regulated program. The commission only agreed upon five trivial rules,—providing for the length of sessions and the times of meeting and adjournments. It also stipulated that the commissioners might occupy places at the sessions "with an eye to their case and convenience, without indicating

the slightest inequality, between them," and that any commissioner might call for a vote on any question before the commission, and that claims should be arranged alphabetically. These rules left entirely open the important matter as to how claimants should prepare their cases and how they should be submitted.

There have been many other claims' commissions which have acted with comparatively little system, but, at the present time, tribunals which are specially organized consider a comprehensive set of rules indispensable for the orderly transaction of business. The commission which organized under a convention between the United States and New Granada in 1857, for the first time reduced these rules to their present definite form. These rules have been followed in such particulars as were practicable by almost all of the important mixed commissions to which the United States has since been a party. In fact, the rules adopted by the New Granadian Commission

in 1860, are stipulated substantially in a circular order of the Department of State of the United States of March 5, 1906, issued for the guidance of claimants who desire the assistance of the department in the prosecution of their claims. This circular order is set forth in the appendix to this volume. The appendix also contains a copy of the rules of the New Granadian Commission and a copy of the rules of the United States and Venezuelan Commission of 1903, which are simple, and which provide an eminently satisfactory precedure.

Chapter IV

At the present time the question of arbitration occupies a position of dignity and importance which its most enthusiastic advocates a generation ago hardly anticipated. The possibility of settling international difficulties peaceably and judicially is no longer merely an academic idea. It is an important part of practical international politics. Those of us who now foresee, in certain powerful international influences, the early abolition of war, are no longer generally looked upon as crazy optimists. In this changed attitude two forces are chiefly responsible. The first is The Hague Conference, which has now become a regularly assembling international gathering for the promotion of peace. The second is the movement for general arbitration treaties among civilized nations. Both of these influences are exceedingly practical in their results and have already definitely accomplished much

in the direction of peacefully linking together the peoples of the world.

The history of The Hague Conference clearly emphasizes the importance generally attached to the idea of arbitration. It is in connection with this great idea that the average man immediately associates these international meetings. If we should question the first person we meet as to the real purposes served by The Hague Conference he would probably answer immediately, "Arbitration." The two ideas are so completely associated in the popular mind as to mean essentially the same thing. As a matter of fact, however, arbitration figured little in the plans of those who originated these gatherings. The Czar and his ministers assembled the first Hague Conference in the interests of general peace, but they gave little consideration to arbitration as a means of securing that end. The chief idea in their minds was not arbitration, but disarmament. In 1899 all the nations of

Europe were suffering intensely, as they are now, from the burden of keeping together enormous armies and navies in times of peace. The absurdities and dangers of the military system were as apparent then as they are now. That the heavy taxation and the mental and physical strain inherent in the system would eventually lead to international bankruptcy and destruction, was as apparent in 1899 as it is in 1911. That militarism was the greatest menace to peace was also perfectly clear. It was in the hope of mitigating this situation that the Czar, in August, 1898, issued his famous rescript. In this document, though the purpose set forth was "the maintenance of general peace," arbitration was not once mentioned. The Czar's ambition was, "above all, to put an end to the progressive development of the present armaments." A few months before the conference assembled, Count Mouravieff issued a supplementary rescript, in which he suggested eight subjects

that might appropriately come up for consideration. The first of these was the question of disarmament: "An understanding not to increase for a fixed period the present effective of the armed military and naval forces, and at the same time not to increase the Budgets pertaining thereto; and a preliminary examination of the means by which a reduction might even be effected in future in the forces and Budgets above mentioned." In the very last of these subjects "facultative arbitration" is mentioned for the first time.

The proceedings of the two Hague Conferences disclose how the original purpose has gradually dropped out of sight while arbitration has forged into prominence. The work of the first conference was organized under three commissions. The first dealt with disarmament; the second with miscellaneous matters intended to mitigate the horrors of war; and the third with the peaceful settlement of international disputes. When the

second Hague Conference met in 1907, however, the situation had materially changed. The first Hague Conference, so far as the purpose for which it was originally called was concerned, had been a lamentable failure. It accomplished nothing in the way of disarmament. The nations absolutely refused to bind themselves to the slightest extent in this matter. The conference was succeeded by an era of militarism to which that which preceded it had been comparatively insignificant. Germany had begun an enormous extension of its navy; Japan, the United States and other leading nations had followed suit. Two great wars, the Russo-Japanese and the South African, had taken place. The only important success accomplished by the first Hague Conference had been along lines that had figured little in the plans of those who had called it. Its one great triumph had been the creation of a Permanent Court of Arbitration. Meanwhile, acting chiefly upon the impetus given by

the recommendations and discussions at the first conference, nations had concluded thirty-three treaties for the arbitration of international disputes. In this changed attitude the influence of the United States had been powerful.

The instructions of John Hay, then Secretary of State, to the American delegates to The Hague in 1899, are especially illuminating. They clearly indicate the direction which the proceedings ultimately took. Mr. Hay dismissed the first subject of discussion, disarmament, as one in which the United States had no particular interest, owing to the smallness of its army and navy, and suggested that the delegates leave the initiative in these matters to the representatives of European powers. He at once selected the last article as the most important. "The eighth article," he wrote, "which proposes the wider extension of good offices, mediation and arbitration, seems to open the most fruitful field for dis-

cussion and future action. . . . . The proposed conference promises to offer an opportunity thus far unequaled in the history of the world for initiating a series of negotiations that may lead to important practical results. The long continued and widespread interest among the people of the United States in the establishment of an international court, gives assurance that the definite proposal of a plan of procedure by this government for the accomplishment of this end would express the desires and aspirations of the nation. The delegates are, therefore, enjoined to propose, at an opportune moment, the plan for an international tribunal, and to use their influence in the conference in the most effective manner possible to procure the adoption of its substance or of resolutions directed to the same purpose. It is believed that the disposition and aims of the United States in relation to the other sovereign powers could not be expressed more truly or opportunely than by

an effort of the delegates of this government to concentrate the attention of the world upon a definite plan for the promotion of international justice."

That is precisely what the conference succeeded in doing. When the second meeting took place, therefore, in 1907, the question of disarmament did not figure in the proceedings at all. The idea foremost in everybody's mind was arbitration. The Russian Emperor proposed the program for the second conference as he had for the first. In this, however, he did not mention the subject of disarmament. His first proposition was for the discussion of arbitration and the Permanent Court. The conference, when it met, divided its work among four commissions. The first of these was on arbitration, whereas it had been the last in the preceding conference. In other words The Hague Conference, which had been originally concluded in 1899 for the purpose of limiting armaments, had, by 1907, become an

institution whose chief aim was the promotion of arbitration. And it is comforting to our national self-complacency to reflect that American influence has been chiefly instrumental in bringing about this change.

The greatest work of the first conference was the Permanent Court; that of the second, the establishment of a Court of Prize. Important as these innovations are in themselves, they are even more important in their implications. It is probably no exaggeration to say that the proceedings at The Hague foreshadow important developments in the political and judicial organization of civilization. They mark essential steps towards that federation of the world which, merely as a poetic phrase, has occupied so large a part in the imagination of statesmen. As a matter of fact, the preliminary steps have already been taken toward such a federation. The Hague Conference itself is virtually an international legislature. It is now a regularly established body meeting

periodically. Upon certain international matters—the regulation of warfare, the establishment of peace tribunals, the determination and codification of certain departments of international law—it possesses important and far-reaching legislative powers. As a parliamentary body, its decisions, to be binding, must, of course, be unanimous, for nations have not reached that stage of enlightenment where they can recognize majority rule; but important federations have frequently started in this same modest way. In the Court of Prize, established in 1907, we have what is essentially an international court of justice. There are yet, of course, no indications of an international executive; but, already, in their beginnings—if only in their beginnings—we have the legislative and judicial departments of an international government.

The first Hague Conference had not proceeded far when all hopes of success centered upon the work of the third commission—that

dealing with the question of good offices, mediation and arbitration. It is hard for us to-day to imagine the general atmosphere of pessimism which surrounded this conference in the early days. In his "Autobiography," Andrew D. White, who was the president of the American delegation, speaks of the gloom and general hopelessness with which he went to The Hague. At first he felt disinclined to accept his appointment because of the feeling that he was being sent on a fool's errand. As American ambassador at Berlin, he had come immediately into contact with this point of view. In no place was Russia's good faith so openly questioned; the statesmen of Germany sincerely believed that the whole proceeding was only a Russian plot to curb the defenses of other nations while strengthening its own. At The Hague the representatives of Germany and other powers made little secret of the fact that they regarded the whole affair as an international farce. It early became apparent,

therefore, that nothing would be accomplished in the matter of disarmament; nor in the early days of the session was the outlook much better for arbitration. Germany's chief representative, Count Münster, openly ridiculed the idea; the Emperor was known to be strongly opposed to it; and one of the German delegates had actually written a book against arbitration! The German idea was that, in case of threatened hostilities, the existence of an arbitration tribunal would imperil Germany's interests. Germany could mobilize its army within ten days; no other power could mobilize its army within anything like that time, and, in the opinion of German statesmen, other nations would therefore make use of an arbitration tribunal merely to gain time. Germany also regarded arbitration as in derogation of its sovereignty, and, as the greatest military power in Europe, was temperamentally opposed to the whole idea.

The most active workers for the tribunal

were the United States and Great Britain. Each country had its own plan; and the one finally adopted represented a compromise between the two. The United States worked hard for a permanent tribunal, one composed of eminent judges who should sit continuously —a tribunal as regularly organized as the United States Supreme Court. For such a body, however, not much sentiment developed at that time. The British proposal, brought forward by Sir Julian (afterwards Lord) Pauncefote, consisted of little more than a panel of eminent jurists, to be nominated by the signatory powers—a permanent list of arbitrators from which the estranged nations could at any time select judges to pass upon particular disputes. The Permanent Court at The Hague, therefore, is really not a permanent court at all. The description humorously applied to it, as a court without judges, is perhaps extreme; but it is permanent only in the sense that its list of arbitrators is always

on file, and always at the disposal of any two disputing powers. Instead of a court constantly in session, deciding cases largely on precedents furnished by itself, it provides a list of men from which any two powers can at any time construct a court of their own.

Appeal to this tribunal is, of course, purely voluntary within certain circumscribed limits. Russia, seconded by the United States, attempted to make its use compulsory. Russia proposed a list of questions upon which the assembled nations should bind themselves to submit to its judgment. On a cursory reading the questions seem harmless enough. The plan excluded not only "national honor" and "vital interests," but nearly everything that, under any imaginable conditions, could ever lead to war. Questions of copyrights, patents, postoffice regulations, canals, contagious diseases—these were the topics upon which Russia wanted obligatory arbitration. Probably the plan was to introduce these questions

merely as an "entering wedge." To make the assembled nations acknowledge the principle of compulsory arbitration, even in comparatively unimportant matters, would certainly have been a great gain. This list likewise represented only a beginning; it could have been added to at subsequent conferences, until ultimately it might have become really imposing. But Germany would have none of it, and it was consequently withdrawn. The American delegates then centered their labors upon persuading Germany to accept the permanent tribunal, with the compulsory feature taken out. Mr. White has described in his "Autobiography" his attempts—finally successful—to convert Count Münster to the plan. When, therefore, there came a message from the Emperor peremptorily commanding the German delegates to vote against it, Count Münster himself was considerably disturbed. He at once despatched one of the German delegates to Berlin to remonstrate with the

authorities; and, at his suggestion, Frederick W. Holls, one of the American delegates, went to Berlin on the same errand. Mr. White gave Mr. Holls a long letter to Baron von Bülow, then Foreign Secretary, in which he made an earnest appeal for Germany's support and answered in great detail all the Emperor's objections. Baron von Bülow sent this letter to the Emperor, who eventually withdrew his opposition. Had Germany not finally supported the tribunal, it must certainly have failed; for Germany's support necessarily included that of its allies, Italy and Austria.

Attenuated as this Permanent Court may seem to be, it transformed the first Hague Conference from a failure into a success. Had it failed, the world would have lost much more than these beginnings of an international court. The Hague Conference itself would have fallen into such general disrepute that no country, at least for many years, would have had the hardihood to call another. The

prestige of the conference has also been immensely heightened by the actual success of the tribunal itself. In spite of its purely voluntary nature and somewhat loose organization, this Permanent Court, as amended by the conference of 1907, has developed into a valuable agency for preserving international relations. Since its institution in 1899, it has arbitrated nine disputes. The first was one in which the United States, quite appropriately, was a party: for the settlement of the Pius Fund case between this country and Mexico, in 1902. This long standing controversy originally grew out of the claim of certain American bishops for their share of the income known as the "Pius Fund of the Californias." The fund was established in the old Spanish days for the conversion of the Indians and for religious purposes in the Californias. After the United States purchased Upper California in 1848, Mexico failed to pay any part of the income to the proper recipients

in Upper California. The case was brought before the Mixed Commission of 1870 at Washington and an award was given against Mexico. This award amounted to twenty-one year's interest at the rate of six per cent upon one half of the capitalized value of the Pius Fund.

The award was paid, but Mexico declared that the payment settled the claim for all time. The American government declined to submit to this position, and after some years' intermittent correspondence, the two governments agreed to refer the matter to The Hague Court. Each of the parties selected two members from the list of arbitrators and these gentlemen selected a fifth member who, under the terms of The Hague Convention of 1899, acted as president. The opening session of this first arbitration at The Hague was attended by most of the resident diplomatic corps and other distinguished persons, and excited considerable interest and attention.

Practically all of the contentions of the United States were sustained by the tribunal. The award directed perpetual payment of the yearly sum, thus settling the controversy that the claim was *res adjudicata* by virtue of the previous award.

The case was submitted through agents appointed, on behalf of the United States, by the Department of State and argued by duly appointed counsel. Aside from the written arguments, oral arguments were heard on both sides, the French and English languages being used.

In 1903 Great Britain, Germany and Italy formed an alliance for the purpose of blockading Venezuelan ports to secure a settlement of claims for their subjects. Through the good offices of the United States an agreement was adopted by which Venezuela contracted to set apart a percentage of the customs receipts of two ports. This money was to be applied to the payments of whatever claims might be

ascertained by mixed commissions, not only to be due to the three powers mentioned but to seven other powers, among them the United States. The ten claims commissions met at Caracas in the summer of 1903, and rendered their awards in due course. Meantime the blockading powers demanded that the payment of their claims should be made before the settlement of any of the claims of the so-called "peace" powers. Venezuela on the other hand insisted that all her creditors should be paid upon a basis of equality. The question was submitted to The Hague Court, the governments of the United States, Mexico, Sweden and Norway, France, Belgium and the Netherlands joining with Venezuela as parties in the arbitration against the three blockading powers. On February 22, 1904, the award was rendered, giving numerous reasons why the three blockading powers had a right to preferential treatment.

The protocols for this arbitration provided

that the Russian Emperor appoint, from the members of the Permanent Court, three arbitrators, none of whom should be a citizen or subject of the appearing States. They were to meet on the first of September, 1903, and render their decision six months afterward. The protocols provided that the proceedings should be carried on in the English language but that arguments might, with the permission of the tribunal, be made in any other language also. This arbitration is remarkable because of the large array of civilized powers appearing before the tribunal. With the three arbitrators, it furnished a representation in all of fourteen of the greatest nations of the world.

France, Germany and Great Britain next appeared before The Hague Court against Japan. The difficulty involved a tax on buildings standing on lands held under perpetual lease in former foreign concessions. While this government did not participate in the arbitration, Japan gave us assurance that the

United States should have the benefit of the award. The protocol of submission provided that each party should select one arbitrator and that the two arbitrators should then designate an umpire. Failing to do so within two months, the King of Sweden and Norway was to name the umpire. All of the arbitrators were to be taken from the Permanent Court of Arbitration. The tribunal, on the 22d of May, 1905, decided that the provisions of the treaties and other engagements mentioned in the protocol of submission, exempt not only the lands held in virtue of the perpetual leases but also exempt buildings of all kinds constructed or that might be constructed upon them from any sort of tax, or charges other than those contained in the existing leases. The Japanese member of the tribunal recorded his dissenting voice. This was the first dissenting opinion of a tribunal under the terms of The Hague Convention, the two previous awards having been unanimous. The

Japanese government, as one party, named I. Motono as arbitrator; the other powers named L. Renault; while G. Gram was named as president, chosen under the terms of the protocol. The case was argued by agents and counsel appointed by the respective parties.

On July 25, 1905, the Muscat arbitration took place at The Hague Court between France and England. The arbitrators were Messrs. Lammasch, who acted as president of the tribunal, Chief Justice Fuller and Dr. di Savornin Lohman. The French language was adopted as the language of the tribunal, but both French and English were allowed in the arguments.

The first sitting was on July 25, and, after the customary opening formalities, the court adjourned until August 1, to permit the English government to frame a reply to certain supplementary conclusions presented at the last moment by the French agent.

At the meeting on August 1, the French

agent presented certain memoranda which emphasized his case. The British agent had twenty-four hours to reply, but at the end of that time he decided not to answer. The court then adjourned *sine die* to await the award. Forty-eight hours' notice was given to the members of the administrative council, the agents and secretaries to the delegations, that the award would be made on August 8.

The room in which the tribunal sat was crowded when the arbitrators took their seats at three p.m. on that day. The award is included in the fourth protocol and is as follows:

"1. Dhows of Muscat authorized as aforesaid to fly the French flag are entitled in the territorial waters of Muscat to the inviolability provided by the French-Muscat treaty of November 17, 1844.

"2. The authorization to fly the French flag cannot be transmitted or transferred to

any other person or to any other dhow, even if belonging to the same owner.

"3. Subjects of the Sultan of Muscat, who are owners or masters of dhows authorized to fly the French flag or who are members of the crews of such vessels, or who belong to their families, do not enjoy, in consequence of that fact, any right of exterritoriality which could exempt them from the sovereignty, especially from the jurisdiction of His Highness, the Sultan of Muscat."

Three years later the arbitration of the "Casablanca Affair" brought two European States before the tribunal. This question concerned German deserters from the French Army. The *compromis* or protocol for arbitration was signed at Berlin, November 24, 1908. There were five arbitrators, two chosen by each and the fifth conjointly, on the tribunal. They held their first meeting at The Hague on May 1, 1909, and made the award three weeks later. A Franco-German protocol

to put into effect the award was signed May 30, 1909.

The same year, 1908, Norway and Sweden settled at The Hague their maritime boundary so far as it was not determined by the royal resolution of March 15, 1904. The tribunal consisted of Dr. J. A. Loeff, a Hollander, as president, and Messrs. F. V. M. Beichmann and Dr. K. Hj. L. de Hammars Kjold, as arbitrators. An award was given October 23, 1909.

And now we come to what is perhaps the most important arbitration yet held at The Hague under The Hague Conventions—that between Great Britain and the United States on the Atlantic Northeastern Fisheries Question. This question, which had been the occasion of diplomatic controversy for many decades, involved the interpretation of certain parts of the Treaty of 1818, giving to American citizens rights in common with British subjects in the fisheries off Newfoundland.

While the arbitration is so recent as to be fresh in the mind, the details are certainly interesting.

By a special agreement, concluded under Article II of our general treaty of arbitration with Great Britain, signed on April 4, 1908, and ratified the following January, this much discussed question was referred to The Hague. The special agreement submitted seven questions to arbitration. The tribunal was constituted from the general list of members of the Permanent Court in accordance with Article XLV of the International Convention of 1907. The tribunal as organized consisted of Professor Doctor Lammasch of Austria, president; Dr. Drago of Argentina; Dr. di Savornin Lohman of the Netherlands; Judge George Gray of the United States; and Sir Charles Fitzpatrick, Chief Justice of Canada. These judges held the opening session on June 1, 1910, and met four days a week or forty days in all. Arguments, oral and printed,

were submitted on both sides, closing with the splendid argument of Elihu Root. The award, given September 7, may be regarded as equally gratifying to both parties to the controversy and therefore constitutes a testimonial of incalculable value to the efficacy of arbitral settlements. While the award fails to recognize the right of the inhabitants of the United States to take fish in the treaty and non-treaty waters uncontrolled by local legislation, it decides that the British legislation must be reasonably necessary for the preservation of the fishing grounds and fish, or for other good reasons. Furthermore, if the United States questions the reasonableness of such legislation, it is to be referred to a permanent board whose determination shall be final. This is an entirely satisfactory arrangement for our fishermen, and an ideal solution of the problem. The award was likewise satisfactory in the matter of the employment of local fishermen by American vessels, and also with

reference to the requirements of entry or report of American fishermen at custom-houses for the payment of light, harbor or other dues, and to the rights which such fishermen shall enjoy regarding entry for shelter, repair, purchase of supplies, in the bays and harbors of the non-treaty coasts.

The decision upon the question as to the meaning of "bays," "harbors" and "creeks," as used in the Treaty of 1818 (referring to the measurement of the three marine miles from such bays, creeks or harbors), may also be considered satisfactory. It does not read entirely in accord with the contentions of our government, but it affects only the bays, creeks and harbors on the non-treaty coasts. The limitations leave unaffected for any and all purposes the use of bays upon the treaty coasts; and these coasts, with all of their indenting bays, extend from Mt. Joly northward to the Arctic Ocean. The award was satisfactory also in the matter of the com-

mercial privileges which American fishermen should enjoy on the treaty coast.

As to the definition of "bays," the tribunal decided that the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have "the configuration and characteristics" of a bay. At all other places the three marine miles are to be measured following the sinuosities of the coast. But owing to the vagueness of this description, the tribunal proposed that the two countries should come to an agreement that only bays of ten miles width should be considered as those wherein fishing is reserved to nationals.

In an article in the *Review of Reviews* for October, 1910, the opinion is complimentary to the decision. The writer says: "With one exception, that indicated by the dissent of Dr. Drago, the award came as near as possible to satisfying both parties as any judicial decision can satisfy both litigants." The dissent

of Dr. Drago on one question out of seven, was the only exception to a unanimous decision.

Another interesting arbitration before The Hague Court was that between the United States and Venezuela arising out of claims of several companies. Under a protocol of agreement signed at Caracas on February 13, 1909, these claims were submitted to arbitration before The Hague Court. It arranged that the tribunal should be composed of two arbitrators, and that the arbitrators should meet at The Hague to select the third member. Meantime, however, Venezuela settled through direct diplomatic medium all of the claims except the one which excited the most interest and which afforded the most interesting point of international law. This was the case of the Orinoco Steamship Company. The claim had been before the United States-Venezuelan Claims Commission of 1903, and an award had been given then by the umpire. The United

States, on behalf of the claimants, however, did not accept the award and asked its revision on the ground that the umpire had decided a claim not submitted and had rendered his award in disregard of the *compromis* and against its express terms.

The two arbitrators, chosen respectively by the United States and Venezuela, met at The Hague in September, 1910, to select the third member. In the award, the tribunal, without dissent, declared the old award void in several particulars, and allowed a greater amount. The decision is most important in that it recognizes that exceeding of powers and essential error may be grounds for holding void an international award. It is believed that this award will be regarded as a step of prime importance in making arbitration a judicial rather than a diplomatic or compromise proceeding.

The latest arbitration at The Hague occurred on February 24, 1911, in the "Savarkar" case.

The question was of fact and law raised by the arrest and restoration to the mail steamer *Morea* at Marseilles, of the British Indian Savarkar. He had escaped from that vessel, where he was in custody, and the demand had been made by the government of the French Republic for the restitution of Savarkar. The arbitrators were M. Beernaert, President of the tribunal, the Right Honorable Earl of Desart, M. Louis Renault, M. G. Gram, and the Jonkheer, A. F. di Savornin Lohman. Each government appointed an agent. The award decided that the British government is not required to restore the said Vinayak Damodar Savarkar to the government of the French Republic.

As an example of the additional advantages afforded by The Hague Court in amicably settling controverted questions, I may mention the recent treaty between the Netherlands and Portugal, signed December 16, 1908, providing for the fixing of the boundary in the Island

of Timor, in the Malay Archipelago, according to the decision of the mixed commission instituted in virtue of a previous treaty, and providing that "all questions or all differences respecting the interpretation or execution of the present convention, if they cannot be resolved amicably, shall be submitted to the Permanent Court of Arbitration at The Hague."

The American Claims Treaty, signed at Mexico in 1902 by most of the American States, and ratified by the United States, Guatemala, Salvador, Peru, Honduras and Mexico, agrees to submit their pecuniary claims to arbitration and to submit to the Permanent Court all controversies which are the subject-matter of the treaty, unless the parties prefer a special jurisdiction to be organized under The Hague Conventions. At the recent Conference of American States at Buenos Ayres, this treaty was renewed and adopted in a permanent form.

These instances show the position of great dignity which The Hague Tribunal has already achieved. Without power to compel a resort to its decrees, with no authority to enforce them, it is now the regularly recognized place to which all civilized nations submit their minor difficulties. With increasing years its prestige and authority will increase and its scope will be broadened. In the minds of most observers of international events the time is not far distant when the really Permanent Court of Arbitral Justice will be an established fact. When this happy time arrives, perhaps before, the beautiful Court of Justice, the generous gift of Andrew Carnegie, now building at The Hague, will suitably house the important archives as well as afford a dignified and stately hall for arbitration.

The cases cited also furnish some idea of the matter of procedure. The two Hague Conferences have adopted complete rules of

order, which are printed in detail form in the appendix to this book.

As the Arbitration Tribunal was the great achievement of the first Hague Conference, so the International Prize Court was the great achievement of the second. Many centuries of maritime warfare had demonstrated the need of this institution. We are all familiar with the old-fashioned method of passing upon the disposition of vessels and their cargoes, which have been taken as prizes of war. We had many illustrations of it in our own recent war with Spain. Our ships simply paraded the seas, capturing here and there any vessels that seemed to be violating the neutrality laws. Our captains brought these ships to our own ports, where they were held pending inquiries into the validity of the capture. In all cases, of course, our own courts passed upon the merits of the dispute. This method necessarily involved the negation of the fundamental principles of justice. Unless a court

is so constituted that the case can be heard impartially upon its merits, it cannot properly be regarded as a court at all. Under the old system this was precisely the situation with regard to prize courts. Virtually the captor himself passed upon the merits of the capture. If, in our ordinary courts of law, the plaintiff himself also acted as judge, we should have a situation comparable to that which always existed with prize cases. Theoretically, of course, the national courts were supposed to look out for the interests of neutrals; but judges are human beings, and to expect them always to maintain this judicial attitude, especially in exciting war times, and to give their full legal rights to outside parties who are suspected of giving assistance to the enemy, was asking too much. And, as a matter of fact, neutrals had almost invariably fared badly in these cases.

The remedy was simple enough. All nations should agree to submit these captures, at least

upon appeal, to a tribunal composed of neutrals—of men, that is, who had no personal or national interest in the outcome. Obvious as this solution seems, it was not until the second Hague Conference, in 1907, that international public opinion had reached that stage where such a plan could be definitely formulated. Germany and Great Britain took the lead; their representatives, indeed, came to the conference definitely instructed upon the subject. There was considerable divergence in the two schemes. Germany wanted a court *ad hoc*—one organized at the outbreak of each war, to consider seizures taking place only in that war. England, on the other hand, advocated a permanent court. There was a general agreement that the court should not have original jurisdiction, but should decide only on appeal; Germany, however, demanded an appeal from the court of first instance, whereas Great Britain advocated an appeal from the court of last instance. Several of

the smaller nations asserted their right to have a permanent representation on the tribunal; had this recommendation been followed, we should have had a court consisting of forty-five judges—which, of course, would not have been a court at all, but a judicial assembly. For a time these conflicting ideas seemed likely to wreck the whole proposition; but Mr. Choate, the head of the American delegation, stepped in happily with a plan upon which the opposing factions found themselves able to agree. This plan provided that the appeal should lie from the court of second instance; that the appeal should be taken by the captor under general rules to be established by his government, and finally that the court should be composed of judges who were lawyers, but that no case should be decided unless there were a naval representative of each of the parties present to advise the court. It was also agreed that the court should consist of fifteen judges, eight of them from Germany,

the United States, Austria-Hungary, France, Great Britain, Italy, Japan and Russia, and the remaining seven from the other powers represented at the conference. This compromise was finally unanimously adopted. It has been sent for ratification to all the forty-five nations participating in the conference.

The court of "second instance" in Great Britain and the United States, from which an appeal would lie in prize cases, is the court of last resort in each of these countries. In Great Britain, the action is brought in the Admiralty Court with the right of appeal to the highest court, and in our country the action is brought in the District Court with the right of appeal to our highest court. This would mean in our country an appeal from our Supreme Court to the International Prize Court. The idea of submitting a decision of the Supreme Court of the United States to an international tribunal at first glance appears to be inconsistent with our national dignity, but there is precedent for

such a proceeding. For example, the Treaty of Washington of 1871, between Great Britain and the United States, providing for the settlement of claims arising out of the Civil War, submitted to a mixed commission claims which had been decided adversely to Great Britain by the Supreme Court. These claims were submitted for decision "according to justice and equity," and in six instances full compensation was awarded by the commission and these awards were paid by the United States.

This court, when it is completely organized and working, will have an infinite number of questions to decide. As it was humorously said of the Peace Tribunal that it was a court without judges, so someone has criticised the Prize Court as a court without law. The laws and practices of different states in the rights of neutrals markedly differ. Hardly any two agree upon what constitutes contraband, what are the proper limits of a blockade, and similar important points. The maritime courts of

each country have built up a body of law and precedents which is sufficient for its own purposes, but hardly acceptable, in all its details, to its neighbors. Precisely what principle is the new Prize Court to adopt? Japan suggested that this point be decided before the question of the court itself was voted upon; but this suggestion was wisely ignored. In a general way it was agreed that the court, in each particular instance, should decide according to the relevant conventions existing between the two parties to the dispute, and according to the generally accepted principles of international law. If these somewhat vague directions did not suffice, then the court was to fall back upon general "justice and equity." Future Hague Conferences will unquestionably codify international law affecting the rights of neutrals, and the experience and precedents of the court itself will eventually reduce these principles to some workable, generally acceptable form.

Especially significant is the fact that, for the first time in the world's history, we have an international tribunal, whose decisions forty-five nations have agreed to accept as binding. The question has naturally arisen, Why should its activities be confined to prize cases? Is it not possible that its jurisdiction can be gradually extended, until eventually it shall embrace a large range of subjects upon which nations are likely to differ? Why not, indeed, gradually extend its scope until the Prize Court is transformed into that Court of Arbitral Justice, which has so conspicuously figured in the discussions at the two Hague Conferences, though thus far without result? American statesmen have been quick to see this possibility. In the latter part of 1909, Secretary Knox, having occasion, for constitutional reasons, to address the powers concerning the International Prize Court, took the opportunity to express his profound regret that the Court of Arbitral Justice had not been

definitely adopted at The Hague Conference. He then proposed an international agreement to the effect that the judges of the International Prize Court should be competent to sit as judges of the Court of Arbitral Justice, thus *actually* forming the Court of Arbitral Justice, and that otherwise the court should conduct its proceedings in accordance with the draft convention adopted at The Hague. Mr. Knox's suggested amendment met with favorable response and there is now a good chance that, in a short time, most of the great powers, including the United States, will ratify the Prize Court Convention, with the additional protocol amendment proposed for constitutional reasons. Until the International Prize Court is definitely organized, it is not probable that the powers will act upon Mr. Knox's second suggestion for its enlargement into an Arbitral Court, although the proposition has been received with attentive and favorable consideration.

In addition to the arbitration measures adopted at The Hague, the arbitration treaties negotiated in the last fifteen years have also powerfully worked for general peace. In view of the present attitude of the United States on this subject, the history of the movement in this country is extremely interesting. Though the Pan-American Congress organized by James G. Blaine was largely a movement for arbitration with the Central and South American Republics, the first step towards general arbitration treaties with European powers was taken by the United States Senate on February 14, 1890. On that day the Senate passed a resolution requesting the President to enter into negotiations with the powers with which we enjoyed diplomatic relations for the settlement of disputes by arbitration. In view of recent happenings the wording of this resolution is especially interesting. It excepted no causes from the scope of the proposed agreements; it asked that the President negotiate

"to the end that *any* differences or disputes arising between the two governments which cannot be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means." Here we have the Senate of the United States, in so many words, explicitly advocating arbitration on all questions. In April, 1890, the House of Representatives adopted this same resolution thereby pledging Congress on the side of unrestricted arbitration. Three years later the House of Commons reciprocated. In a formal resolution it quoted the words of the American Congress and expressed the hope that "Her Majesty's government will lend their ready coöperation to the government of the United States upon the basis of the foregoing resolution." The Venezuelan difficulty, which nearly plunged the two nations into war, interrupted these peaceful negotiations. Unquestionably, however, that same disturbance greatly stimulated the cause of arbitration,

for it brought forcibly before the Anglo-Saxon mind the appalling danger it had barely escaped and clearly indicated the means of permanently avoiding such calamities. In 1896, therefore, Lord Salisbury and Mr. Richard Olney, Secretary of State, entered into a most interesting and elevating correspondence on the subject of an arbitration treaty, and, in the early part of 1897, President Cleveland sent the proposed treaty to the Senate. Though this convention specifically evaded questions of national honor and vital interests, it marked a remarkable advance over the practice of nations in dealing with questions of this kind. It will always be a source of national regret and humiliation that it failed of ratification. It is hardly necessary, at this place, to rehearse the reasons for this failure. The fact is worth recording, however, that the very legislative body which started the negotiations, itself ultimately prevented their success; and this though the treaty which it

disapproved involved a far smaller diminution of its powers than the one which it had itself advocated.

This was certainly a sad blow to arbitration, but the first Hague Conference gave the cause a powerful stimulus. It adopted a resolution, which became Article XVI of the convention, that "in questions of a legal nature, and especially in the interpretation and application of International Conventions, arbitration is recognized by the signatory powers as the most effective and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle." Even more specifically, the conference decreed, in Article XIX, that "independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obli-

gatory arbitration to all cases which they may consider it possible to submit to it." Acting upon these declarations and carefully observing their terms and limitations, the signatory powers, soon after the adjournment of the conference, began negotiating arbitration treaties. By the time the second conference met, thirty-three such treaties were in existence: there are now in the neighborhood of fifty. Unhappily, the action of our Senate in 1897 deprived the United States of that historical preëminence which would have been so legitimate a source of national pride. The first arbitration treaty between any two great powers was negotiated between England and France in 1903. The United States subsequently fell into line, still, however, in the face of senatorial opposition. In 1904, the then Secretary of State, John Hay, negotiated several treaties between the United States and foreign nations, but the Senate refused to take action upon them, notwithstanding the

urging of President Roosevelt. After the second Hague Conference, in 1908 and 1909, Secretary Root signed nearly identical treaties with several great powers, including Austria, France, Great Britain, Italy and Japan, which were consented to by the Senate and are now in force. These treaties stipulate that, in each case, before appealing to The Hague Court, the two parties shall conclude a special agreement (*compromis*) defining the matter in dispute and the scope of the arbitrators, with the proviso that, on the part of the United States, each such special agreement will be referred to the Senate for advice and consent. It will be seen that the principal difference between the present treaties and the Hay drafts lies in the aforesaid special provision for submission to the Senate.

The last chapter in the arbitration story is that which describes the statesmanlike attempts made by President Taft to secure arbitration on all questions. At a meeting of the

American Peace and Arbitration League, on March 22, 1910, Mr. Taft boldly proposed to disregard the traditional limitations on national honor and vital interests, and to subject all disputes to peaceful settlement. His words on this occasion should be quoted in full:

"I have noticed exceptions in our arbitration treaties, as to reference of questions of honor—of national honor—to courts of arbitration. Personally, I do not see any more reason why matters of national honor should not be referred to a court of arbitration any more than matters of property or matters of national proprietorship. I know that this is going further than most men are willing to go, ... but I do not see why questions of honor may not be submitted to a tribunal supposed to be composed of men of honor who understand questions of national honor, to abide by their decision, as well as any

other question of difference arising between nations."

The people of America and England, indeed, of the world at large, were instant to appreciate the far-reaching import of these words and to make public demonstrations of approval. Andrew Carnegie's gift of ten million dollars for international peace greatly stimulated this enthusiasm. In the deed of trust, the donor commended President Taft's idea as the shortest and easiest path to peace and urged the trustees, as the first step, to coöperate for an unlimited arbitration treaty between the two English-speaking peoples. The utterances of Sir Edward Grey, Mr. Balfour and other distinguished statesmen, staunchly supported by the British public, indicate the great interest in the subject in England. The treaties recently signed between the United States and Great Britain and France seem to justify these anticipations. They expand the scope of existing general

arbitration agreements by eliminating the exceptions concerning questions of vital interest and national honor. They propose that all differences that are internationally justiciable shall be submitted to The Hague Tribunal unless some other tribunal is created or selected by special agreement. *They stipulate that differences that the country thinks are not internationally justiciable* shall be referred to a commission of inquiry with power to make recommendations for their settlement. The commission is to be made up of nationals of the two governments who are members of The Hague Court. *Should the commission decide that the difference should be arbitrated, this decision is to be binding.* The arbitrations are to be conducted under terms of submission subject to the advice and consent of the Senate. Before arbitration is resorted to, even in cases where both countries agree that the difference is one susceptible of arbitral decision, the commission of inquiry shall investi-

gate the difference with a view of recommending a settlement that will preclude the necessity of arbitration. The remainder of the pact concerns the machinery of arbitration.

In the preceding chapter I have discussed in some detail the questions involving national honor, independence and vital interests as proper matters for arbitration. I think that I have there shown that Mr. Taft's plan, enlightened and advanced as it certainly is, is by no means Utopian. At the present writing, the fate of his new treaties is not clear. There are indications that the Senate may repeat its performance of 1897, and again deprive the American people of a great opportunity. Calamitous as such action would be, it would only stay for a brief time the progress of this great idea. And whatever course events take in the next few months, the credit of making general arbitration a living actuality will probably constitute Mr. Taft's greatest claim to immortality.

APPENDIX.

Rules of the Commission appointed under the Convention of 1857 between the United States and New Granada.

Circular order of the Department of State issued for the guidance of Claimants, March 5, 1906.

Rules of the Commission appointed under the protocol of 1903, between the United States and Venezuela.

Rules of the Permanent Court of Arbitration set forth in the convention for the pacific settlement of international disputes, signed at The Hague, October 18, 1907.

Rules and Regulations of the Commissioners Appointed Under the Convention Between the United States of America and the Republic of New Granada, of the 10th of September, 1857.

Ordered, That all persons having claims upon the Republic of New Granada, which are provided for by the convention between the United States and the said Republic, concluded on the 10th day of September, 1857, do file memorials of the same with the Secretary of this Board, in the city of Washington.

Every memorial so filed must be addressed to the commissioners, and must set forth minutely and particularly the facts and circumstances whence the right to prefer such claim is derived to the claimant, and it must be verified by his oath or affirmation.

And in order that the claimants may be

apprised of what is considered necessary to be averred in every such memorial, before the same will be received and acted upon, it is further—

ORDERED, That in every such memorial shall be set forth

1. The amount of the claim; the time when and place where it arose; the kind or kinds and amount of property lost or injured; the facts and circumstances attending the loss or injury, out of which the claim arises; the principles and causes which lie at the foundation of the claim.

2. For and in behalf of whom the claim is preferred.

3. Whether the claimant is now a citizen of the United States, and if so, whether he is a native or naturalized citizen, and where is now his domicile; and if he claims in his own right, then whether he was a citizen when the claim had its origin, and where was then his domicile; and if he claims in the right of

another, then whether such other was a citizen when the claim had its origin, and where was then and where is now his domicile; and if, in either case, the domicile of the claimant at the time the claim had its origin was in any foreign country, then whether such claimant was then a subject of the government of such country, or had taken any oath of allegiance thereto.

4. Whether the entire amount of the claim does now, and did at the time when it had its origin, belong solely and absolutely to the claimant; and if any other person is or has been interested therein, or in any part therof, then who is such other person, and what is or was the nature and extent of his interest, and how, when, and by what means and for what considerations the transfer of rights or interests, if any such was made, took place between the parties.

5. Whether the claimant, or any other who may at any time have been entitled to the

amount claimed, or any part thereof, hath ever received any, and if any, what sum of money, or other equivalent or indemnification, for the whole or any part of the loss or injury upon which the claim is founded, and if so, when and from whom the same was received.

6. Whether the claim was presented prior to the 1st day of September, 1859, either to the Department of State at Washington, or to the Minister of the United States at Bogota, and with which and at what time.

And that time may be allowed to the claimants to prepare and file the memorials above mentioned—

Resolved, That this Board will be in session on the first Monday of September next, and will then proceed to decide whether the memorials which shall then have been filed with the Secretary are in conformity to the foregoing orders, and proper to be received for examination.

ORDERED, That when the Board shall close its present session, it will adjourn to meet in this city, on the first Monday in September next, and will then proceed to consider the claims which may have been presented in conformity to the foregoing order, and all such cases are hereby set down for hearing at that time; and if any claimant desire a longer time in which to file a memorial or present arguments, he must file a written motion to that effect, setting forth the reasons for the same, on or before said day.

ORDERED, That all motions and arguments addressed to the Board be made in writing and filed with the Secretary, who shall note thereon the time when they are received; but brief verbal explanations may be made by the claimants or their agents immediately after the opening of each day's session, and the commissioners may, in special cases, hear oral arguments at length, upon briefs being filed,

setting forth the points of law and fact and the authorities relied upon.

ORDERED, That the following rules and orders, relating to testimony and proofs hereafter taken to be advanced in support of claims which may be presented for adjudication, be and the same are hereby established. All other proofs will be passed upon as offered:

1. The proofs in support of the claims shall be filed with the memorials, and no proofs will be received subsequently, except such as are strictly to rebut proofs which shall have been presented on the part of New Granada.

2. All testimony must be in writing, and upon oath or affirmation, duly administered according to the laws of the place where the same is taken, by a magistrate competent by such laws to take depositions, having no interest in the claim to which the testimony relates, and not being the agent or attorney of any

person having such interest, and it must be certified by him that such is the case. The credibility of the affiant or deponent, if known to such magistrate, or other person authorized to take such testimony, must be certified by him, and if not known, must be certified on the same paper upon oath, by some other person, known to such magistrate, having no interest in such claim, and not being the agent or attorney of any person having such interest, whose credibility must be certified by such magistrate. The deposition must be reduced to writing by the person taking the same, or by some person in his presence having no interest, and not being the agent or attorney of any person having an interest in the claim, and must be carefully read to the deponent by the magistrate before being signed by him, and this must be certified.

3. Depositions taken in any city, port or place, without the limits of the United States, may be taken before any consul or other

public civil officer of the United States resident in such city, port or place, having no interest, and not being agent or attorney of any person having an interest in the claim to which the testimony so taken relates. In all other cases, whether in the United States or in any foreign place, the right of the person taking the same to administer oaths by the laws of the place must be proved.

4. Every affiant or deponent must be required to state in his deposition his age, place of birth, residence and occupation, and where was his residence and what was his occupation at the time the events took place in regard to which he deposes; and must also state if he have any, and if any, what interest in the claim to support which his testimony is taken; and if he have any contingent interest in the same, to what extent, and upon the happening of what event he will be entitled to receive any part of the sum which may be awarded by the commissioners. He must

also be required to state whether he be the agent or attorney of the claimant, or of any person having an interest in the claim.

5. Original papers exhibited in proof must be verified as originals by the oath of a witness, whose credibility must be certified as required in the second of these rules; but when the fact is within the exclusive knowledge of the claimant, it may be verified by his own oath or affirmation. Papers in the handwriting of any person who has deceased, or whose residence is unknown to the claimant, may be verified by proof of such handwriting, and of the death of the party, or his removal to places unknown.

6. All testimony taken in any foreign language, and all papers and documents in any foreign language, which may be exhibited in proof, must be accompanied by a translation of the same into the English language.

7. When the claim arises from the seizure or loss of any ship or vessel, or the cargo of

any ship or vessel, a certified copy of the enrollment or register of such ship or vessel must be produced, together with the original clearance, manifests, and all other papers and documents required by the laws of the United States which she possessed on her last voyage from the United States, when the same are in the possession of the claimant, or can be obtained by him; and when not, certified copies of the same must be produced, together with his oath or affirmation that the originals are not in his possession, and cannot be obtained by him.

8. In all cases where property of any description, for the seizure or loss of which a claim has been presented, was at the time of such seizure or loss insured, the original policy of insurance, or a certified copy thereof, must be produced.

9. If the claimant be a naturalized citizen of the United States, a copy of the record of

his naturalization, duly certified, must be produced.

10. Documentary proof shall be authenticated by proper certificates or by the oath of a witness.

11. When a claimant shall have filed his proofs in chief, the proof on the part of the Government of New Granada shall be filed within the term of ninety days. But upon good cause shown, on either side, the period prescribed may be extended in particular cases.

12. The name of the counsel or agent for each claimant shall, with his address, be signed to the memorial and entered upon the record, so that all necessary notices may be served upon such counsel or agent, respecting case.

Circular Letter of the Department of State Issued for the Guidance of Claimants.

Citizens of the United States having claims against foreign governments, not founded on contract, in the prosecution of which they may desire the assistance of the Department of State, should forward to the department statements of the same, under oath, accompanied by the proper proof.

The following rules, which are substantially those which have been adopted by commissions organized under conventions between the United States and foreign governments for the adjustment of claims, are published for the information of citizens of the United States having claims against foreign governments of the character indicated in the above notification; and they are advised to conform as nearly as possible to these rules in prepar-

ing and forwarding their papers to the Department of State.

Each claimant should file a memorial, *in triplicate,* properly dated, setting forth minutely and particularly the facts and circumstances from which the right to prefer such claim is derived by the claimant. This memorial should be verified by his or her oath or affirmation.

All subsequent communications to the department in the nature of statements of fact, arguments, or briefs should likewise be furnished *in triplicate.*

The memorial and all the accompanying papers should have a margin of at least one inch on each side of the page, so as to admit of their being bound in volumes for preservation and convenient reference; and the pages should succeed each other, like those of a book, and be readable without inverting them.

When any of the papers mentioned in rule 11 are known to have been already furnished

to the department by other claimants, it will be unnecessary to repeat them in a subsequent memorial. A particular description, with a reference to the date under which they were previously transmitted, is sufficient.

Nor is it necessary, when it is alleged that several vessels have been captured by the same cruiser, to repeat in each memorial the circumstances in respect to the equipment, arming, manning, flag, etc., of such cruiser, which are relied upon as the evidence of the responsibility of a foreign government for its alleged tortious acts. A simple reference to and adoption of one memorial in which such facts have been fully stated will suffice.

It is proper that the interposition of this government with the foreign government against which the claim is presented should be requested in express terms, to avoid a possible objection to the jurisdiction of a future commission on the ground of the generality of the claim.

Claims of citizens against the Government of the United States are not generally under the cognizance of this department. They are usually subjects for the consideration of some other Department, or of the Court of Claims, or for an appeal to Congress.

Rules.

In every memorial should be set forth:

1. The amount of the claim; the time when and place where it arose; the kind or kinds and amount of property lost or injured; the facts and circumstances attending the loss or injury out of which the claim arises; the principles and causes which lie at the foundation of the claim.

2. For and in behalf of whom the claim is preferred, giving Christian name and surname of each in full.

3. Whether the claimant is now a citizen of the United States, and, if so, whether he

is a native or naturalized citizen and where is now his domicile; and, if he claims in his own right, then whether he was a citizen when the claim had its origin and where was then his domicile; and if he claims in the right of another, then whether such other was a citizen when the claim had its origin and where was then and where is now his domicile; and if, in either case, the domicile of the claimant at the time the claim had its origin was in any foreign country, then whether such claimant was then a subject of the government of such country or had taken any oath of allegiance thereto.

4. Whether the entire amount of the claim does now, and did at the time when it had its origin, belong solely and absolutely to the claimant; and, if any other person is or has been interested therein, or in any part thereof, then who is such other person and what is or was the nature and extent of his interest; and how, when, and by what means and for what consideration the transfer of rights or

interests, if any such was made, took place between the parties.

5. Whether the claimant, or any other who may at any time have been entitled to the amount claimed, or any part thereof, has ever received any, and, if any, what, sum of money or other equivalent or indemnification for the whole or any part of the loss or injury upon which the claim is founded; and, if so, when and from whom the same was received.

6. All testimony should be in writing, and upon oath or affirmation, duly administered according to the laws of the place where the same is taken, by a magistrate or other person competent by such laws to take depositions, having no interest in the claim to which the testimony relates, and not being the agent or attorney of any person having such interest, and it must be certified by him that such is the case. The credibility of the affiant or deponent, if known to such magistrate or other person authorized to take such testimony,

should be certified by him; and, if not known, should be certified on the same paper upon oath by some other person known to such magistrate, having no interest in such claim and not being the agent or attorney of any person having such interest, whose credibility must be certified by such magistrate. The deposition should be reduced to writing by the person taking the same, or by some person in his presence having no interest, and not being the agent or attorney of any person having an interest in the claim, and should be carefully read to the deponent by the magistrate before being signed by him, and this should be certified.

7. Depositions taken in any city, port, or place without the limits of the United States may be taken before any consul or other public civil officer of the United States resident in such city, port, or place, having no interest, and not being agent or attorney of any person having an interest in the claim to which the

testimony so taken relates. In all other cases, whether in the United States or in any foreign place, the right of the person taking the deposition to administer oaths by the laws of the place must be verified.

8. Every affiant or deponent should state in his deposition his age, place of birth, residence and occupation, and where was his residence and what was his occupation at the time the events took place in regard to which he deposes; and must also state if he have any, and, if any, what, interest in the claim to support which his testimony is taken; and, if he have any contingent interest in the same, to what extent, and upon the happening of what event, he will be entitled to receive any part of the sum which may be awarded. He should also state whether he be the agent or attorney of the claimant or of any person having an interest in the claim.

9. Original papers exhibited in proof should be verified as originals by the oath of

a witness, whose credibility must be certified as required in the sixth of these rules; but, when the fact is within the exclusive knowledge of the claimant, it may be verified by his own oath or affirmation. Papers in the handwriting of any one who is deceased or whose residence is unknown to the claimant may be verified by proof of such handwriting and of the death of the party or his removal to places unknown.

10. All testimony taken in any foreign language and all papers and documents in any foreign language which may be exhibited in proof should be accompanied by a translation of the same into the English language.

11. When the claim arises from the seizure or loss of any ship or vessel, or the cargo of any ship or vessel, a certified copy of the enrollment or registry of such ship or vessel should be produced, together with the original clearance, manifests, and all other papers and documents required by the laws of the United

States which she possessed on her last voyage from the United States, when the same are in the possession of the claimant or can be obtained by him; and, when not, certified copies of the same should be produced, together with his oath or affirmation that the originals are not in his possession and cannot be obtained by him.

12. In all cases where property of any description, for the seizure or loss of which a claim has been presented, was insured at the time of such seizure or loss, the original policy of insurance, or a certified copy thereof, should be produced.

13. If the claimant be a naturalized citizen of the United States, a copy of the record of his naturalization, duly certified, should be produced.

14. Documentary proof should be authenticated by proper certificates or by the oath of a witness.

15. If the claimant shall have employed

counsel, the name of such counsel should, with his address, be signed to the memorial and entered upon the record, so that all necessary notices may be addressed to such counsel or agent respecting the case.

DEPARTMENT OF STATE,
Washington, March 5, 1906.

Rules of the United States and Venezuelan Claims Commission.

Organized under the Protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

I.

The secretaries shall keep a docket and enter thereon a list of all claims as soon as they shall be formally filed with the commission. They shall indorse the date of filing upon each paper presented to the commission and enter a minute thereof in the docket. The claims shall be numbered consecutively beginning with the claim first presented as No. 1.

The caption of each case shall be:

The United States of America On Behalf of _____ *Claimant* v. The Republic of Venezuela.	No. _____

The secretaries shall keep duplicate records of the proceedings had before the commission and of the docket of claims filed with the commission, both in English and Spanish, so that one copy each shall be supplied to each government.

II.

All claims must be formally presented to the commission within thirty days from the first day of June, 1903, unless the commissioners or the umpire grant a further extension in accordance with the provisions of paragraph 2 of Article II of the protocol.

III.

A claim shall be deemed to be formally filed with the commission upon the presentation of the written documents or statements in connection therewith to the secretaries of the commission by the agent of the United States.

IV.

The Government of the United States by its

agent shall have the right to file with each claim at the time of presentation a brief in support thereof.

It shall not be necessary for the Republic of Venezuela in any case to deny the allegations of the claim or the validity thereof; but a general denial shall be entered of record by the secretaries, as of course, and thereby all the material allegations of the petition shall be considered as put in issue.

The Republic of Venezuela, however, by its agent, shall have the right to make specific answer to each claim within fifteen days after the date of filing thereof, and, if it elects to answer, it shall, at or before the time of making said answer by its agent, present to the commission all evidence which it intends to produce in opposition to the claim. The Government of the United States, by its agent, shall have the right to present evidence in rebuttal within the period in this rule provided for the filing of a replication.

The filing of a brief on behalf of the claimant government and the filing of a brief on behalf of the respondent government or the failure to specifically answer any claim within the time allowed, as above provided, shall be deemed to close the proceedings before the commission in regard to the claim in question, unless the agent of the United States within two days from the filing of a brief by the respondent government shall formally request of the commission, in writing, a further period of five days in which to file a replication; in which event the Republic of Venezuela shall, upon the like request of its agent, have a like period within which to put in a rejoinder, which replication and rejoinder shall finally close the proceedings.

V.

The petition or answer may be amended at any time before the final submission of any

claim, as provided in the preceding rules, upon leave granted by the commission.

VI.

No documents or statements or written or oral argument will be received except such as shall be furnished by or through the agents of the respective governments.

VII.

The secretaries shall each keep a record of the proceedings of the commission for each day of its session in both English and Spanish, in books provided for the purpose, which shall be read at its next meeting, and if no objection be made, or when corrected, if correction be needed, shall be approved and subscribed by the umpire and commissioners and countersubscribed by the secretaries.

They shall keep a notice book in which entries may be made by the agent for either government, and when made shall be notice to the opposing agent and all concerned.

They shall provide duplicate books of printed forms under the direction of the commission, in which shall be recorded its several awards or decisions signed by the commissioners, or, in case of their disagreement, by the umpire, and verified by the secretaries.

They shall be the custodians of the papers, documents, and books of the commission under its direction, and shall keep the same safe and in methodical order. While affording every reasonable opportunity and facility to the agents of the respective governments to inspect and make extracts from papers and records, they shall permit none to be withdrawn from the files of the commission, except by its direction duly entered of record.

VIII.

When an original paper on file in the archives of either government cannot be conveniently withdrawn, a duly certified copy may be received in evidence in lieu thereof.

Chapters III and IV of the Convention for the Pacific Settlement of International Disputes Signed at The Hague, October 18, 1907.

Arbitration Procedure of the Permanent Court of Arbitration.

Article 51.

With a view to encouraging the development of arbitration, the contracting powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

Article 52.

The powers which have recourse to arbitration sign a *Compromis,* in which the subject of the dispute is clearly defined, the time allowed for appointing arbitrators, the form,

order and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The *Compromis* likewise defines, if there is occasion, the manner of appointing arbitrators, any special powers which may eventually belong to the tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

Article 53.

The Permanent Court is competent to settle the *Compromis,* if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present convention has come into force, and providing for a *Compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *Compromis* from the competence of the court. Recourse cannot, however, be had to the court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one power by another power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the *Compromis* should be settled in some other way.

ARTICLE 54.

In the cases contemplated in the preceding article, the *Compromis* shall be settled by a commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is president of the commission *ex officio*.

ARTICLE 55.

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present convention.

Failing the constitution of the tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

ARTICLE 56.

When a sovereign or the chief of a state is chosen as arbitrator, the arbitration procedure is settled by him.

ARTICLE 57.

The umpire is President of the tribunal *ex officio*.

When the tribunal does not include an umpire, it appoints its own President.

ARTICLE 58.

When the *Compromis* is settled by a commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the commission itself shall form the Arbitration Tribunal.

ARTICLE 59.

Should one of the arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure

is followed for filling the vacancy as was followed for appointing him.

ARTICLE 60.

The tribunal sits at The Hague, unless some other place is selected by the parties.

The tribunal can only sit in the territory of a third power with the latter's consent.

The place of meeting once fixed cannot be altered by the tribunal, except with the consent of the parties.

ARTICLE 61.

If the question as to what languages are to be used has not been settled by the *Compromis,* it shall be decided by the tribunal.

ARTICLE 62.

The parties are entitled to appoint special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to retain, for

the defense of their rights and interests before the tribunal, counsel or advocates appointed by themselves for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the power which appointed them members of the court.

ARTICLE 63.

As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication, by the respective agents to the members of the tribunal and the opposite party, of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the *Compromis*.

The time fixed by the *Compromis* may be extended by mutual agreement by the parties, or by the tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussion consists in the oral development, before the tribunal, of the arguments of the parties.

ARTICLE 64.

A certified copy of every document produced by one party must be communicated to the other party.

ARTICLE 65.

Unless special circumstances arise, the tribunal does not meet until the pleadings are closed.

ARTICLE 66.

The discussions are under the control of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in the minutes drawn up by the secretaries appointed by the President. These minutes are signed by the President and by one of the secretaries, and alone have an authentic character.

Article 67.

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

Article 68.

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE 69.

The tribunal can, besides, require from the agents of the parties the production of all papers and can demand all necessary explanations. In case of refusal the tribunal takes note of it.

ARTICLE 70.

The agents and the counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

ARTICLE 71.

They are entitled to raise objections and points. The decisions of the tribunal on these points are final and cannot form the subject of any subsequent discussion.

ARTICLE 72.

The members of the tribunal are entitled to put questions to the agents and counsel of the

parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions, can be regarded as an expression of opinion by the tribunal in general or by its members in particular.

Article 73.

The tribunal is authorized to declare its competence in interpreting the *Compromis,* as well as the other acts and documents which may be invoked, and in applying the principles of law.

Article 74.

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 75.

The parties undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the case.

ARTICLE 76.

For all notices which the tribunal has to serve in the territory of a third contracting power, the tribunal shall apply direct to the government of that power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the power applied to under its municipal law allow. They cannot be rejected unless the power in question considers them calculated to impair its own sovereign rights or its safety.

The court will equally be always entitled to

act through the power on whose territory it sits.

Article 77.

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

Article 78.

The tribunal considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the tribunal.

Article 79.

The award must give the reasons on which it is based. It contains the names of the arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

ARTICLE 80.

The award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

ARTICLE 81.

The award, duly pronounced and notified to the agents of the parties, settles the dispute definitely and without appeal.

ARTICLE 82.

Any dispute arising between the parties as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the tribunal which pronounced it.

ARTICLE 83.

The parties can reserve in the *Compromis* the right to demand the revision of the award.

In this case and unless there be an agreement to the contrary, the demand must be

addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the award and which was unknown to the tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *Compromis* fixes the period within which the demand for revision must be made.

Article 84.

The award is not binding except on the parties in dispute.

When it concerns the interpretation of a convention to which powers other than those in dispute are parties, they shall inform all the

signatory powers in good time. Each of these powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

ARTICLE 85.

Each party pays its own expenses and an equal share of the expenses of the tribunal.

Chapter IV. Arbitration by Summary Procedure.

ARTICLE 86.

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the contracting powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

ARTICLE 87.

Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the umpire is determined by lot.

The umpire presides over the tribunal, which gives its decisions by a majority of votes.

ARTICLE 88.

In the absence of any previous agreement the tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ARTICLE 89.

Each party is represented before the tribunal by an agent, who serves as intermediary

between the tribunal and the government who appointed him.

ARTICLE 90.

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in court it may consider useful.

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